Exhibit A

Approved Budget

Week #		Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9[1]	Weeks 1 - 8
Beginning Date		10/6/2024	10/13/2024	10/20/2024	10/27/2024	11/3/2024	11/10/2024	11/17/2024	11/24/2024	12/1/2024	10/6/2024
End Date		10/12/2024	10/19/2024	10/26/2024	11/2/2024	11/9/2024	11/16/2024	11/23/2024	11/30/2024	12/7/2024	11/30/2024
Actual / Forecast		*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*
Memo: Total Sales		*64,644*	*72,020*	*70,683*	*73,967*	*88,290*	*89,936*	*103,098*	*125,200*	–	*687,839*
Operating Receipts											
Credit Card Receipts		57,708	58,308	58,821	59,253	68,815	76,771	76,413	106,325	–	562,413
Cash Deposits		11,067	10,094	11,600	10,748	12,189	14,038	14,000	17,530	–	101,267
Other Sales		4,175	4,123	4,246	4,232	4,921	5,487	5,391	7,608	–	40,183
Miscellaneous		2,235	229	2,293	8,482	896	1,105	3,158	1,359	–	19,756
Total Receipts		**75,185**	**72,754**	**76,960**	**82,715**	**86,821**	**97,400**	**98,961**	**132,823**	**–**	**723,619**
Operating Disbursements											
Accounts Payable		52,677	34,033	60,895	66,075	61,632	61,963	50,616	74,317	–	462,208
Payroll		11,986	22,730	9,891	17,014	8,946	16,014	8,685	16,014	–	111,279
Rent		436	436	422	366	31,459	366	366	366	–	34,217
Sales Tax		4,943	9,983	6,397	–	–	3,770	14,138	943	–	40,174
Total Operating Disbursements		**70,042**	**67,182**	**77,605**	**83,454**	**102,037**	**82,113**	**73,805**	**91,639**	**–**	**647,878**
Total Net Operating Cash Flow		**5,143**	**5,572**	**(645)**	**(739)**	**(15,217)**	**15,287**	**25,156**	**41,183**	**–**	**75,741**
Non-Operational Disbursements											
Professional Fees		4,094	2,155	1,705	3,455	1,455	3,455	–	9,006	–	25,325
UST Fees		–	–	400	–	–	–	–	–	–	400
Stub and Other Rent[2]		–	–	–	–	7,913	–	–	–	30,110	7,913
503(b)(9) Payments[3]		1,054	4,468	548	2,478	3,300	9,300	14,121	16,619	–	51,888
Other		1,000	–	–	–	1,000	–	–	4,000	–	6,000
Total Non-Operating Disbursements		**6,148**	**6,623**	**2,653**	**5,933**	**13,668**	**12,755**	**14,121**	**29,625**	**30,110**	**91,526**
Unlevered Free Cash Flow		**(1,005)**	**(1,051)**	**(3,298)**	**(6,673)**	**(28,885)**	**2,532**	**11,036**	**11,559**	**(30,110)**	**(15,784)**
Financing											
ABL Borrowings / (Payments)		2,381	5,100	3,700	8,600	19,800	(1,400)	(5,600)	31,296	–	63,876
FILO Borrowings / (Payments)		–	–	–	–	10,000	–	–	–	–	10,000
FILO FF&E Paydown		(1,235)	(229)	(293)	(2,082)	(896)	(1,105)	(1,158)	(14,359)	–	(21,356)
Interest, Amort and Bank Fees		–	(3,896)	–	–	–	–	(4,320)	–	–	(8,216)
Other		–	–	–	–	–	–	–	(10,000)	–	(10,000)
Total Financing Cash Flow		**1,146**	**976**	**3,407**	**6,518**	**28,904**	**(2,505)**	**(11,078)**	**6,936**	**–**	**34,305**
Total Net Cash Flow		**142**	**(75)**	**109**	**(155)**	**19**	**27**	**(42)**	**18,495**	**(30,110)**	**18,520**
Beginning Bank Balance		11,589	11,731	11,656	11,765	11,610	11,629	11,657	11,615	30,110	11,589
(+/-) Net Cash Flow		142	(75)	109	(155)	19	27	(42)	18,495	(30,110)	18,520
Ending Bank Balance		**11,731**	**11,656**	**11,765**	**11,610**	**11,629**	**11,657**	**11,615**	**30,110**	**–**	**30,110**
Availability											
ABL Borrowing Base	*a*	447,383	447,601	454,748	465,732	486,220	500,926	502,583	516,501		516,501
FILO Borrowing Base	*b*	143,953	143,725	143,432	141,350	150,454	149,349	148,191	133,832		133,832
(-) ABL Balance	*c*	(291,562)	(296,662)	(300,362)	(308,962)	(328,762)	(327,362)	(321,762)	(353,058)		(353,058)
(-) FILO Balance	*d*	(143,953)	(143,725)	(143,432)	(141,350)	(150,454)	(149,349)	(148,191)	(133,832)		(133,832)
(-) LCs	*e*	(61,209)	(61,209)	(58,749)	(58,749)	(58,749)	(58,749)	(58,749)	(58,749)		(58,749)
MEA Covenant:	*f*	(80,000)	(80,000)	(80,000)	(80,000)	(80,000)	(80,000)	(80,000)	(80,000)		(80,000)
ABL Availability (excl. MEA)	*g = a + c + e*	**94,612**	**89,730**	**95,637**	**98,021**	**98,709**	**114,815**	**122,072**	**104,694**		**104,694**
ABL Availability (incl. MEA)	*h = g + f*	**14,612**	**9,730**	**15,637**	**18,021**	**18,709**	**34,815**	**42,072**	**24,694**		**24,694**
FILO Availability	*i = b + d*	**–**	**–**	**–**	**–**	**–**	**–**	**–**	**–**		**–**
Total Availability (incl. MEA)	*j = h + i*	**14,612**	**9,730**	**15,637**	**18,021**	**18,709**	**34,815**	**42,072**	**24,694**		**24,694**

1. Budget assumes transaction closes on 11/30/2024, budget will be updated accordingly if delayed

2. Other Rent consisted of estimated amount of ~$7m that relates to balances owed through September 8th

3. $33.2m of 503(b)(9) claims are assumed by the buyer and paid post transaction

Exhibit B

October 21, 2024 Hearing Transcript

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Chapter 11
	. Case No. 24-11967 (JKS)
BIG LOTS, INC., *et al.*,	.
	. (Jointly Administered)
	.
	. Courtroom No. 6
	. 824 Market Street
Debtors.	. Wilmington, Delaware 19801
	.
	. Monday, October 21, 2024
. . . . .	. 1:30 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Sophie Rogers Churchill, Esquire
Daniel Butz, Esquire
Casey Sawyer, Esquire
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INDEX

(Proceedings commenced at 1:38 p.m.)

THE COURT: Good afternoon. Please be seated, everyone. This is Judge Stickles. We are on the record in Big Lots, Case No. 24-11967. Can you bear with me one second? I feel like I'm in the dark, but I'd rather not be.

MR. RESNICK: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. RESNICK: Brian Resnick of Davis Polk & Wardwell that on behalf of the debtors. I am joined by several of my colleagues as well as our co-counsel from Morris Nichols.

From the company, we have Mr. Jonathan Ramsden, the chief financial and administrative officer as well as Rocky Robins, the executive vice-president, chief legal officer and governance officer for the Big Lots management team. I'm also joined today by Adam Rifkin and Stuart Erickson from Guggenheim and Ken Kersey from Alix Partners.

Your Honor, before we start with the agenda, I just wanted to give a very brief update of where things stand since our last hearing.

As Your Honor is aware, we were able to potentially resolve many of the issues on the other first days, and Your Honor hopefully entered that relief. That was not without a ton of work and back-and-forth with the various parties. So we certainly want to thank you, the Trustee's

office as well as the committee and the banks and the landlord groups for working with us on those various motions to achieve consensus.

We worked very hard to narrow the issues that are before Your Honor today, and there are a few discrete issues, but I think we worked very hard to really narrow those.

Also, in terms of what's been going on, the initial 341 meeting was conducted by Ms. Casey last Wednesday. That was October 16th. And we understand that Ms. Casey will be scheduling a second meeting following the filing of the schedules and the SOFAs, and we're expecting to file those on -- by October 31st at the latest.

Otherwise, Your Honor, we continue with the debtor's vendors and other stakeholders to continue to operate smoothly in these Chapter 11 cases as we pursue the sale process.

In terms of what's next, Your Honor, this will be up in the bid procedures, but just high level. Our bid deadline is scheduled for this Wednesday, a few days from now. And then, assuming we have more than one qualified bid, the auction is scheduled for October 28th, one week from now. And then, we have a sale hearing scheduled for November 8th.

We have worked constructively with our stalking horse bidder, Nexus, to make some changes to the APA, to the bid procedures, and worked with the landlord group, as well.

My colleague, Mr. Peppiatt, is going to address that motion and some of the changes that were made.

Your Honor, I think that brings us to the six items that are on the agenda today. I think three of which are fully consensual. And to start with, the utilities motion that was filed at Docket No. 9, we filed a -- we were able to resolve an objection that was filed, and -- by the utility company that filed the withdrawal of the objection, and so we submitted a proposed final order under certification under Docket No. 563.

THE COURT: I had an opportunity to look at that. I was curious. Paragraph 2 of that order refers to paragraph 14(a) and 15 with respect to service. And I don't think that's the correct reference paragraphs. It looks to me like that should be paragraphs 16 and 17 address service.

MR. RESNICK: Okay. I'm sorry, Your Honor. I have it out, but which page are you looking -- reviewing?

THE COURT: I was looking at paragraph 2. In line 3 of paragraph 2 it refers to paragraphs 14(a) and 15. I don't think they're the correct paragraphs unless I don't understand the order.

MR. RESNICK: Got it. Why don't we have our team take a look at that in the interim.

THE COURT: Got it. If you'll just let me know by the end of the hearing.

MR. RESNICK: We'll do that. Thank you, Your Honor.

Second is the Davis Polk retention application, which was filled at Docket No. 205. Ms. Casey requested that we file a supplemental declaration, which we did a few hours ago at Docket 565. And with that, we also filed a certification of counsel at 567.

THE COURT: And I have not had an opportunity to look at that, but I will look at it promptly at the conclusion of the hearing.

MR. RESNICK: Thank you, Your Honor. And then, lastly, for the -- what's uncontested is the NOL motion that was filed at Docket No. 8.

We did not file a certificate of counsel because we had received an email from an individual shareholder and Mr. Kurzon and that the shareholder -- we responded but never heard back, so we assumed that they -- they didn't file an objection, we assumed that they're not prosecuting anything but because there was an interaction with the shareholder that sort of trailed off, we did file a certificate of counsel. But that letter was -- and again, we filed a letter that was docketed at 438.

THE COURT: That was -- I had it down as Betty Burns; is that correct? Or you -- I think you sent a different --

MR. RESNICK: I'm sorry. The letter was in addition. Yes, I apologize. The letter was by Ms. Brens at Docket 438. And Mr. Kurzon was the one who reached out by email. I apologize.

THE COURT: Okay, well, let me ask. Is Ms. Brens, B-R-E-N-S, or Mr. Kurzon on the line? Or anyone else who wishes to be heard regarding Docket No. 8? Okay, I hear no one with respect to an objection.

This motion seeks to implement procedures intended to protect the debtor's estate against the possible loss of tax assets. The proposed order didn't deem stock worthless, as I believe one of the objectors asserted, so I'll enter that form of order.

MR. RESNICK: Thank you, Your Honor. That brings us to the three contested motions. Mr. Piraino will be handling the store closing relief and argument. And then my colleague, Mr. Peppiatt, will be handling the bid procedures motion argument. And that will include testimony from Mr. Adam Rifkin of Guggenheim, who had previously filed a declaration at Docket No. 197.

And then last, we'll do the DIP motion, which will be handled by my colleague, Adam Shpeen.

THE COURT: Okay, thank you.

MR. RESNICK: Thank you, Your Honor.

MR. PIRAINO: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. PIRAINO: For the record, Stephen Piraino of Davis Polk & Wardwell on behalf of the debtors. Your Honor, just one housekeeping point before we start.

We filed a motion at Docket No. 559 to file a late reply. As set forth in the motion, given that we were continuing to resolve objections, we believe there is cause to grant the motion. I just wanted to make sure we got that out of the way before we begin today's hearing.

THE COURT: Does anyone oppose the motion to file late reply? Okay, I hear no one. I'll grant that motion. I will note I had meetings this morning, so if you have something in that reply, I looked at it briefly, but if there's anything you want to focus on in the reply, you should.

MR. PIRAINO: Thank you, Your Honor. We will do so. So moving on to the first item on the agenda today is Docket No. 16, which is the store closing motion. This Court granted the motion on an interim basis, and the interim order can be found at Docket No. 134.

Today, the debtors are seeking entry of a final order, and a proposed final order was filed at Docket No. 557. Since the first day hearing, the debtors have worked constructively with various counterparties, including the committee, landlords, state taxing authorities, insurance

companies, and state attorneys general. And the final order that consensually resolves various objections or obviated the need for parties to file an objection includes, for example, requesting a committee for periodic reporting, language addressing personal property tax liabilities, and from the National Association of Attorney's General, language to address concerns about customer privacy and protection.

We've also made sure to include in the final order Your Honor's comment from the first day hearing about disposal of abandoned property without liability to third parties.

And Your Honor, importantly, the creditors' committee is not objecting to the relief sought today. However, as noted in the reply and as noted on the agenda, the U.S. Trustee and certain landlords continue to pursue objections. For the reasons in our reply that we'll discuss today, those objections should be overruled on the merits.

If Your Honor would allow, I'd like to provide a short opening addressing the U.S. Trustee's objection, which was filed at Docket No. 503, at which point I'll cede the podium to my colleague, James McClammy, for a brief direct examination of Jonathan Ramsden, and then after the witness testimony, I will address the additional objections and, of course, any questions Your Honor may have.

THE COURT: Okay.

MR. PIRAINO: Your Honor, the U.S. Trustee seeks to overturn years of established practice and precedent in this district by arguing that store liquidators like Gordon Brothers Retail Partners, or GBRP, are professionals under Section 327(a) of the Bankruptcy code.

While there is no doubt that GBRP has expertise in store liquidations, indeed, that's why the debtors engaged them more than two years ago, that fact does not make them a professional under Section 327(a).

Judge Shannon in In Re Brookstone, 592 BR 27 came to the same conclusion, and I quote literally all business and service activities require specialized knowledge or skill on the part of the service provider.

At the October 9th hearing, Your Honor stated that the test in this district for whether someone is a professional under Section 327 is the six-factor test articulated by the District Court In Re First Merchants Acceptance Corp.

And as set forth in our reply papers and as will be discussed today, when applying those factors here, GBRP is simply not a professional under Section 327. Importantly, GBRP does not control the debtors, is not an agent of the debtors, and does not have discretion to exercise its own judgment over the debtor's reorganization.

For example, Section 4.1 of the consulting

agreement provides that neither party is an agent of the other or is authorized to enter into or make commitments on behalf of the other party. GDRP is not directing the administration of the estate. Again, they simply cannot speak on behalf of the estate or the debtors in possession.

Just like the liquidator of Brookstone, GBRP is not determining that store closures are warranted or which stores will be closed. Moreover, store closing sales with the liquidator or consultant routinely occurred pre-petition for Big Lots.

And while GBRP certainly has knowledge or skill, Judge Shannon and Brookstone concluded that that factor of the First Merchants' test is ultimately unhelpful.

The U.S. Trustee's alternative argument also fails. Assumption of a contract with a third party like this consulting agreement is governed by the business judgment standard. Simply because affiliates of GDRP and syndication partners, Tiger and Hilco, have other roles in this case, such as administrative agent or lender, such connections do not indicate a disqualifying conflict.

Bankruptcy courts, including in this district, have continued to approve assumption of consulting agreements just like this when affiliates of the consultant or liquidator are involved in other roles such as lender. For example, in Christmas Tree Shops, Judge Horan approved a very

similar motion that included assumption of an agreement with Hilco.

THE COURT: Was that approved on a final basis?

MR. PIRAINO: That was, Your Honor. And in Brookstone, Judge Shannon expressly acknowledged that Hilco, the liquidator there, might be called upon or invited to play other roles in the case as circumstances may require.

THE COURT: But when he approved it, there were no other roles of Hilco; is that correct?

MR. PIRAINO: In Brookstone, that's correct. And other courts in this circuit, in the District of New Jersey, have similarly acknowledged that affiliates of liquidators are short-closing consultants may have other roles, such as a lender.

On two recent cases, Sam Ash Music Corp and Christopher and Banks, the Bankruptcy Court for the District of New Jersey overruled similar objections by the U.S. Trustee.

So Your Honor, at bottom, the Court is being asked to approve today the standard relief in a retail Chapter 11 case. I'll now cede the podium to Mr. McClammy for a brief direct examination of Mr. Ramsden.

MR. MCCLAMMY: Thank you. Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. MCCLAMMY: For the record, Jim McClammy of Davis Polk on behalf of the debtors. At this time, we'd like to call Mr. Jonathan Ramsden, the executive vice president, chief financial administrative officer of the debtors to the stand.

THE COURT: Okay, thank you. And I'm going to ask the ECRO to employ the broadcasting protocol and then swear in the witness, please. Thank you. Wait one second.

THE COURT REPORTER: Please raise your right hand do you affirm that you will tell the truth, the whole truth and nothing but the truth, to the best of your knowledge and ability?

THE WITNESS: I do.

THE COURT REPORTER: Please state your full name and spell your last name for the record.

THE WITNESS: Jonathan Edward Ramsden, R-A-M-S-D-E-N.

THE COURT REPORTER: Thank you.

MR. MCCLAMMY: Thank you. As Your Honor may recall, as part of the first-day proceedings, Mr. Ramsden offered a declaration which is found in Docket No. 3, which was accepted as evidence at that time, and which also serves as part of the evidentiary record for this motion.

At this time, I'd like to provide a copy of the declaration to the witness.

THE COURT: Okay.

MR. MCCLAMMY: Does Your Honor need a copy?

THE COURT: Are you seeking to admit the declaration to evidence?

MR. MCCLAMMY: I believe it's already admitted, but I'd also like to have it as part of the evidentiary record here, so yes.

THE COURT: Does anyone object to the admission of the Ramsden's declaration in support of first-day motions at Docket No. 3? I hear no one. Thank you.

MR. MCCLAMMY: Thank you, Your Honor.

THE COURT: The declaration is admitted.

(Debtor's 1 entered into evidence.)

MR. MCCLAMMY: Does Your Honor need a copy?

THE COURT: Yes. Can I? It's easier than working through a binder. Thank you, Mr. McClammy.

DIRECT EXAMINATION

By MR. MCCLAMMY:

Q. And Mr. Ramsden, I placed in front of you what was previously filed at Docket No. 3. Can you identify that document, please?

A. Yes. Thank you. I can yes.

Q. And what is this document?

A. This is my declaration in connection with the initial filing.

Q. And is there anything that you would like to change or modify in that document?

A. There is not.

Q. And just briefly, Mr. Ramsden, can you explain your role with the debtors, please?

A. Sure. I'm the executive vice president, chief financial and administrative officer of the company. I've been with the company for a little over five years. I oversee finance, real estate, merchandise planning, corporate strategy primarily.

Q. And in that role, are you familiar with the debtors going-out-of-business sales process? And can you provide us a general overview of what that means, what a going-out-of-business sales processes?

A. Yes, it's a process that occurred for a long period of time. Routinely, in any given year, we would have a number of stores that we would close because we were unable or unwilling to renew the leases.

So we'd have a process where, towards the end of the lease, we would go through going-out-of-business sale in those particular stores, which would entail essentially liquidating all of the inventory in those stores, all of the merchandise, as well as the fixtures and fittings in those stores until the stores are completely run down of inventory and fittings.

Q. And the merchandise and the furniture and the fixtures that are being sold, they're primarily being sold directly out of the particular store that's going out of business; is that correct?

A. Yeah, for the most part, yeah. They can be sold directly to retail consumers in those stores.

Q. Okay. And was there time when the debtors, or Big Lots, I guess, at the time, pre-petition, did they manage that process themselves?

A. We did until a couple of years ago. We mostly ran those processes ourselves. There were relatively few stores going through the GOB processes at that time.

Q. And then what did you do after that?

A. We started to bring in third parties to help us with that process, primarily in 2023, but to some degree in 2022.

Q. Okay. And why was that?

A. Well, we had reason to believe they might be able to secure better recoveries for the merchandise than we could. So that was the primary reason we go down that path.

Q. Were you able to achieve that?

A. Absolutely. The results we got from using third parties were significantly better than running the GOBs ourselves.

Q. And are you familiar with Gordon Brothers Retail

Partners?

A. I am.

Q. And when did the debtors first begin working with Gordon Brothers Retail Partners?

A. Last year. We had them handle a number of the routine GOBs for the company in 2023.

Q. And in general, can you describe for me what services Gordon Brothers Retail Partners provide?

A. Yeah, so they provide consulting services, advising our teams on how to execute various aspects of the store closing process. They work very collaboratively with our teams on things like marketing, markdown, cadence, condensing inventory in certain areas of the store to promote the faster sales of those items and to sell through the remaining inventory as quickly and efficiently as possible.

Q. And those services, those are similar services that were provided both pre-petition and post-petition?

A. That's correct, yes.

Q. Okay. And what was the process for bringing Gordon Brothers on board?

A. So we first engaged them in 2023, again with a relatively smaller number of stores. We also engaged a number of -- two other firms in 2023 to do the same thing. We were interested to see how the different firms performed relative to each other, so we brought those three firms on.

We did consider some other alternatives, but they were -- we chose to go forward with those three firms.

Q. Okay. And among those three firms, how did they perform?

A. Gordon Brothers had the strongest performance in 2023.

THE COURT: I'm sorry, could you repeat that, sir?

THE WITNESS: My answer? Yes.

THE COURT: Yes.

THE WITNESS: Gordon Brothers had the strongest performance of the firms we worked with in 2023.

BY MR. MCCLAMMY:

Q. And is that why the debtors selected Gordon Brothers?

A. That was a significant part of the reason. The appointment was also made in connection with the execution of the final term loan with Gordon Brothers, which required us to use them for the store liquidations going forward. But we were very comfortable with that decision because we've seen very good results from the liquidations they've executed in 2023.

Q. And compared to the debtors doing this work themselves and having Gordon Brothers on board, can you tell us, was there a benefit to having Gordon Brothers involved?

A. Yeah, it's a significantly higher recovery. We

saw probably 25 percent higher than we were able to achieve by managing the GOB processes on our own.

Q. Do you have a view as to what would happen if Gordon Brothers were disqualified from being able to serve in this role for the debtors going forward?

A. Yeah, at this point it would be very disruptive. We have about 550 stores that have either gone through GOB, there are about 150 that have already completed and have closed, but there are still close to 400 stores going through GOB processes. Gordon Brothers is intimately involved with that process, and those GOBs represent the vast majority of the stores we expect to close.

So at this point, to go with another provider of those services would be very disruptive and potentially worse. We would have a very short period of time in which to engage an alternative advisor and that would likely be very challenging and would likely impair the recoveries we would expect from the process.

Q. Thank you. And in this role, is Gordon Brothers Retail Partners focus exclusively on consulting with the debtors in connection with the store closings?

A. That's correct, yes.

Q. And I say store closing, but I mean, with respect to the going-out-of-business sales?

A. Yes.

Q. And is Gordon Brothers Retail Partners advising the debtors generally with respect to Chapter 11 strategy?

A. It is not.

Q. Who is advising the debtors with respect to general corporate -- general Chapter 11 restructuring strategy?

A. So Davis Polk, Guggenheim, Alex Partners. We've also engaged some other advisors.

Q. And is Gordon Brothers helping to devise strategy for maximizing the estate's value?

A. Not in general, only with regard to the store closures.

Q. To your knowledge, would Gordon Brothers be involved in negotiating the plan of reorganization?

A. No.

Q. And you mentioned that there were store closings both prior to the Chapter 11 filing and afterwards. In your experience, have store closings been a typical part of the retail businesses?

A. Yeah. So routinely in any given year there would be a number of stores that we would close. So yes, it's been part of our normal operations for a number of years.

Q. And here, with respect to Gordon Brothers' involvement, do they have any authority to make any final decisions with respect to which assets are sold?

A. They do not, no. The primary authority rests with the company. We work closely with Gordon Brothers in a consultative capacity, but they do not have the unilateral right to make any final decisions on disposition of assets.

Q. And do they have any authority to make any final decisions with respect to which stores should be closed?

A. They do not.

Q. Does Gordon Brothers have authority to make any decisions with respect to staffing levels at the Big Lots stores?

A. They would be involved in consultation on that. And the staffing model in the stores gets adjusted as we go through the GOB process. But again, the company would retain the ultimate decision-making authority on that.

Q. So is it your testimony that basically across the board, with respect to the going-out-of-business sales process, that it's the debtors that retain the ultimate decision-making authority?

A. That's correct, yes.

Q. Are you familiar with an entity called 1903P Loan Agent?

A. Yes, I am.

Q. And what role do they play?

A. They were the agent or are the agent for our term loan facility that we entered into April of this year.

Q. And do you know when they started in that role?

A. We executed the term loan on April the 18th this year, so that's when they assumed that role.

Q. And at that point was Gordon Brothers already Big Lots' liquidation partner in connection with the going-out-of-business sales?

A. They were one of our partners.

Q. And are you familiar with Tiger Capital Group?

A. I am, yes.

Q. Can you explain for us what role Tiger Capital Group is playing?

A. So Tiger Capital Group was also a participant in the term loan facility and they also -- the Tiger Group has other relationships with us too.

Q. Would one of the entities within the Tiger Group be Tiger Finance, LLC?

A. I believe so, yes.

Q. And do you recall what role they play?

A. I believe Tiger Finance, LLC is the participant in the term loan facility.

Q. And to your knowledge, do any of the Tiger entities play a direct role with respect to the going-out-of-business sales process?

A. So we have also engaged in the past with Tiger to execute some of the stalled GOBs. And I believe that Gordon

Brothers has also subcontracted some of the current GOBs to Tiger.

Q. And is there any overlap of the teams at Tiger between those that are dealing with the loans and those that are dealing with the going-out-of-business sales?

A. Not to the best of my knowledge.

Q. Are you familiar with Hilco Merchant Resources?

A. Yes.

Q. And what's your understanding of their role in these procedures?

A. Very similar to Tiger. They're a participant in the term loan, and they're also a firm we've worked with in the past with regards to going-out-of-business sales.

Q. To your knowledge, does Gordon Brothers Retail Partners have any input into exercising rights under the credit facilities?

A. Not to the best of my knowledge.

Q. I think you've answered this already with respect to Tiger, but with respect to Hilco, do you have any understanding as to whether or not there's any overlap in the team at Hilco that they'd be working in connection with the going-out-of-business sales as opposed to the term loans or the credit facility?

A. I don't have any direct knowledge of that.

Q. And then I think you've answered this already, but

my understanding is that the entities that you've worked for or that you've worked with in the past, like Gordon Brothers, include Tiger and Hilco; is that correct?

A. That's correct, yes.

Q. And if the disqualification of Gordon Brothers were to be upheld, they would face a similar disqualification; is that correct?

A. I would assume, yes.

Q. And again, can you just sum up, what difficulties would the debtors face if they weren't able to partner with someone in connection with these going-out-of-business sales?

A. So if that were to occur, we'd have to engage a firm that we haven't worked with in the past, who wouldn't have any familiarity with that business to pick up in the middle of GOBs that are already now, you know, wholly in process, you know, pretty much. I mean, there may be some additional GOBs, but for the most part, the vast majority of stores we expect to close are now in a GOB process.

So a new firm would have to come in in the middle of that transition from Gordon Brothers to take that over, which would likely be difficult on a number of levels. Alternatively, we could pick up that work ourselves, but we know from past experience, that would likely result in a significantly lower recovery on the merchandise and fixtures that we're selling in those stores.

Q. Thank you.

MR. MCCLAMMY: I have no further questions at this time, Your Honor.

THE COURT: Okay, thank you. Cross examination, Ms. Casey.

CROSS-EXAMINATION

BY MS. CASEY:

Q. Good afternoon. Linda Casey, on behalf of the U.S. Trustee, I'd like to start with how many stores did the debtors have as of the petition date?

A. We had a little under 1,400 stores that were open as of that date.

Q. And how many stores have already started and/or concluded the going-out-of-business sales post-petition?

A. So in total, today, we have about 550 stores that are in or have concluded their GOB. Around 150 have fully concluded their GOB and are essentially closed, and there are another 400 at various stages in that process. And as of the filing date, approximately 300 of the 550 had begun the process.

Q. Do the debtors anticipate additional stores to start the going-out-of-business sales during the post-petition period?

A. There's potential for a small number of stores, but the 550 that are already in that process is going to

account for the vast majority of stores we expect to close.

Q. Prior to April of 2024, that's the date that the loan, the term loan, was entered into, correct?

A. Yes.

Q. Prior to April of 2023, let's say the year prior, from April 2023 to April 2024, sorry, I have my dates wrong, how many stores did the debtor close through these liquidating --

A. I believe it was approximately 50.

THE COURT: Did you say 50?

THE WITNESS: 50, yes.

THE COURT: Okay.

BY MS. CASEY:

Q. Prior to the Bankruptcy Court entering the interim order approving the store closing motion, the store closing sales had to comply with existing law; is that correct?

A. That is correct, yes.

Q. And the interim order that was signed by the judge permitted the store closing sales to be conducted in manners that alter that existing law; is that correct?

A. That's my understanding, yes.

Q. And that includes the consultant being allowed to put additional goods that they own into those store selling sales; is that correct?

A. That is something they are permitted to do, yes.

Q. So you said that the services that the consulting -- consultant has provided, including the cadence of prices, can you explain what that means?

A. So as we go through the GOB process, we take various tiers of markdowns and typically start off with a relatively shallow markdown, and then the markdowns will get progressively deeper relative to the original retail price as we go through the GOB, with the goal being to realize as much as we can at the higher margins, but progressively having to increase the markdowns to sell through the entire inventory.

Q. Is that cadence decided on a store-by-store basis, or is that cadence uniform across all of the stores?

A. So there are some general parameters where they are adjusted on the store-by-store basis based on the selling in those stores.

Q. And you said that all they do is advise on the cadence of the prices and that the debtor maintains the authority to approve that. Who at the debtor approves the markdown of inventory on the store basis?

A. So at the merge planning team, all of the proposed adjustments to the markdown cadence roll up to the merge planning team, and they ultimately have the ability to approve or not approve those markets.

Q. I'm sorry. I don't understand that. There's a cadence team?

A. I'm sorry. The merchandise planning team oversees that. So all of the proposed markdowns at each store level are rolled up to the merchandise planning team, who have the ability to override that, but typically don't. Typically would accept those recommendations.

Q. So before -- at each store level, before the consultant can mark down the price, they have to move that up to the debtors for approval every time the prices are marked down?

A. I wouldn't say every, but there is a weekly reporting of all of the markdowns that have been applied at the store level, or are going to be applied, that has to be reviewed by the merchandise plan.

Q. And you said that the consultant has been able to provide a 25 percent higher recovery than the debtors have been able to on their own; is that correct?

A. That's correct, yes.

Q. Does their recommended cadence of prices -- is their expertise in recommending the cadence of price part of the reason why that 25 percent increase in the value of the sales has occurred?

A. Yes, I believe so, yes.

Q. And as you stated, it's unlikely that the debtors would overrule the recommendation on the cadence of prices; is that correct?

A. We certainly recognize that they have expertise with regard to pricing cadence, and so we attach significant weight to that, but we do reserve the right to take a different point of view.

Q. And you said the other thing that they handle is condensing inventory. Can you explain what that means?

A. So for example, as a store starts to sell through and certain areas of the store are sold out, there's no longer any merchandise there, sort of reconfiguring the store to optimize the selling of the remaining inventory is what I was referring to.

Q. And they're not allowed to move the inventory of the store until they get approval from the debtor; is that your testimony?

A. So they work closely with our local team, so we maintain our teams in the stores throughout the GOB process. So there is still a store manager who's there. Typically through the end of the process, there's a district manager who's involved. So they work collaboratively in the store on those types of things to make sure that the solutions optimize their input from terms of their expertise, but also are done in a way that the company is comfortable with.

Q. You also said that one of the services they provide is advising on advertising. Can you explain what they do with that?

A. Yeah. So they typically come up with the original advertising. Again, our marketing team has input to that, but the signage around the markdowns and going-out-of-business sale itself, again, we look to them for their expertise in those areas, but we retain the discretion to accept or not accept any particular recommendation.

Q. Have you not accepted any of their recommendations on advertising in the Big Lots sales?

A. I'm not aware I was not agreeing with their recommendation.

Q. Have you not accepted any of their cadence of prices in the Big Lots sales?

A. I'm not sure of the answer to that.

Q. Have you not accepted their recommendations in the condensing of inventory?

A. I would say with regard to condensing inventory, that's a very collaborative approach. So they have expertise, but they work very closely with our teams at the store level to execute that.

Q. You stated that the consultant does not have the final decision on which assets are to be sold. You've also retained Guggenheim in this case; is that correct?

A. That's correct, yes.

Q. And they are your investment banker to help sell the assets on a going concern basis.

A. That's correct, yes.

Q. Do the debtors retain the final decision as to what assets to be sold in the going concern sale?

A. Do the debtors retain final decision? I'm not sure I can answer that. It's probably a legal question.

Q. Can Guggenheim (inaudible) the debtors to sell without the debtor's approval?

A. I don't believe so. I don't think Guggenheim can bind the company. I think -- ultimately I think the court has to approve whatever we do in terms of the asset disposition.

Q. You also stated that the consultant does not have the final decision on which doors are to be closed. Does Guggenheim have the final decision on which stores are to remain open?

A. They do not. Typically, neither would have any input into the specific decisions about store closures.

Q. You also suggested that the consultant has the ability to make recommendations on staffing. Can you explain what the consultant's role is on staffing?

A. So again, as a store starts to sell through its remaining inventory and fixtures, a certain point in time, the staffing needs of that store will evolve to reflect the lower level of inventory in the store and so on. So Gordon Brothers will have input into that, and they'll work closely

with our store management team, our district management team, to make any adjustments to the store payroll that are appropriate to the current situation at the store.

Q. Are you familiar with the terms of the -- are you familiar with the terms of the agreements with the consultants?

A. Yes, I am.

Q. So the agreement gives the consultant the right to be repaid its expenses in negotiating any side letters with the lenders and the store closing sales also gives the debtors and/or the consultant the ability to negotiate side letters with the lenders. Do the consultants have to the ability to enter -- to negotiate and enter into side letters with the debtors?

A. I don't recall that particular provision, but I'm not aware of any such side letters.

Q. The agreement also provides, and this is the Amendment Number 1, that was effective as of April 18th, 2024, and I'm quoting, "If applicable, any auctioneer may be paid as additional compensation by means of an industry standard buyer's premium added to the gavel price of any sold off FF&E via online auction and collected from the buyers thereof."

Is it your understanding that the consultant has the right to retain an auctioneer to auction off some of the

(inaudible) FF&E?

A. Yes, again, that would only be a applicable to the FF&E. To the best of my knowledge, there hasn't been any auctioning off of any of that FF&E.

My expectation would be any decision on that would be made in conjunction with the company because I think there is also a provision in the agreement that says the decision on which FF&E should be transferred out of the store versus retained in the store and liquidated there is a matter of consultation between Gordon Brothers and the company.

Q. And is it your understanding that the agreement requires mutual agreement between the parties as to what is offered FF&E and what's retained FF&E?

A. That's my understanding, yes.

Q. What happens to inventory at a store that -- debtor-owned inventory at a store that has not been sold at the time that the store closing sale has included?

A. Our goal and intention is to liquidate the entire inventory of the store prior to closing. If there's anything that was left at the end, it would be de minimis and would be abandoned would be my expectation.

Q. Would the consultant be permitted to take ownership of that abandoned merchandise?

A. Not to my knowledge, no.

Q. Would the consultant be authorized to purchase any

of that merchandise?

A. I don't think they would be automatically authorized to do that, but they could potentially make an offer for it. Although, again, the value of that inventory would be de minimis.

Q. You had testified that the consultant and its two syndicated partners are both participants in the secured (inaudible); is that correct?

A. Affiliates of that, yes.

Q. Thank you for that correction. Do you know the percentage or the approximate percentage that those three entities hold -- those three affiliates hold in that secured debt?

A. I don't have that -- those numbers at hand. I am broadly aware of it, but I don't have the specific percentages.

Q. Do you know if collectively they have a majority of the debt?

A. I believe so, yes.

THE COURT: Excuse me, I'm sorry, I distracted myself. Did you say that collectively the three consultants hold a majority of the debt?

THE WITNESS: They're affiliates who -- participants in the term loan, I believe, have a majority of the term loan, yes.

THE COURT: Okay. Collectively. Okay.

BY MS. CASEY:

Q. And the consultants, a term of the -- condition of closing on that FILO loan was that the Gordon Brothers became the exclusive consultant to conduct these going-out-of-business sales; is that correct?

A. That was a provision of the updated MSA, yes.

Q. Are any of the -- let me just ask it individually. Does an affiliate of Gordon Brothers also act as a vendor for the debtors?

A. Yes.

Q. Do they hold a pre-petition unsecured claim as a result of that relationship?

A. They do have a pre-petition claim, which I believe is 503(b)(9).

Q. 100 percent of it is 503(b)(9)?

A. I believe the outstanding amount is, yes.

Q. Does Tiger act as a vendor of the debtors and sell inventory to the debtors?

A. I'm not aware of any specific purchases made from Tiger, but it's possible.

Q. Is Hilco a vendor to the debtors?

A. I believe so, yes.

Q. And is it correct that they hold approximately a $900,000 pre-petition claim as a result of being a vendor for

the debtors?

A. I'm not familiar with that specific number, but that is possible.

Q. And do you know if any part of that is entitled to administrative expense claim priority?

A. I do not.

Q. The debtors are seeking authority for bid procedures to sell certain of their assets as a going concern; is that correct?

A. Yes.

Q. And are you aware that that order provides that secured lenders, and it's probably subject to the challenge period, have the right to credit bid for those assets?

A. Sorry. Could you just say that one more time?

Q. That the proposed bidding procedures grant the secured lenders the ability to credit bid for the assets, perhaps subject to the challenge period, I would assume.

A. Yeah. I'm not familiar with that particular aspect of the bidding procedures.

Q. Are there any other services that the consultant provides to the debtors that we have not addressed?

A. Not that I'm aware of.

Q. Do they advise as to potential bonuses to store-level employees?

A. I don't believe so.

MS. CASEY: I don't think I have any further questions, Your Honor. Thank you.

THE COURT: Okay. Any redirect?

MR. MCCLAMMY: Thank you, Your Honor. Just a couple of clarifying questions. Again for the record, Jim McClammy, Davis Polk on behalf of the debtors.

REDIRECT EXAMINATION

BY MR. MCCLAMMY:

Q. Mr. Ramsden, I believe you testified to this in your direct testimony earlier, when I was asking you some questions. But just to confirm, Gordon Brothers Retail Partners that's consulting with respect to the going-out-of-business sale, are they playing a role with respect to the debtor's strategy and the overall Chapter 11 restructuring process?

A. They are not.

Q. And Guggenheim Partners, are they one of your main advisors with respect to the Chapter 11 restructuring?

A. Yes.

MR. MCCLAMMY: Thank you Your Honor. No further questions.

THE COURT: Okay. Could I ask a question, sir? Does Gordon Brothers, Tiger, Hilco, or any of its affiliates have -- serve as a member of the board?

THE WITNESS: They do not.

THE COURT: Okay. Or the merchandise planning committee, are any of them on the planning committee itself?

THE WITNESS: They do not, no.

THE COURT: Okay, thank you.

MR. MCCLAMMY: Thank you, Your Honor.

THE COURT: You're excused. Thank you sir, for your testimony.

MR. PIRAINO: Your Honor, at this point, happy to take direction from you. If you'd like to hear from other parties or if we should proceed with --

THE COURT: Well, let me -- I don't know if the United States Trustee wants to be heard with respect to its objection.

MS. CASEY: Your Honor, I don't have any additional evidence, so we can go on.

THE COURT: Okay. You can present your argument. Go ahead.

MR. PIRAINO: Thank you, Your Honor. So just before turning to the U.S. Trustee's objection, I do just want to address the non-U.S. Trustee objections briefly.

THE COURT: Certainly.

MR. PIRAINO: I think just importantly as relevant to the instant motion, nothing is cutting off the objecting landlords' right to payment, but -- or their legal rights to payment, but those legal rights, they need to be established.

And that's not before Your Honor with this motion.

As Mr. Shpeen will discuss in his presentation of the DIP financing, the debtors have budgeted for stub rent, and the provision in the budget for payment of stub rent has already resolved the same objection from numerous landlords and should resolve the remaining objections which essentially are reservations of rights.

So turning back to the U.S. Trustee's objection, Your Honor, rationalizing Big Lots real estate footprint is, of course, an important part of the restructuring. But I want to be crystal clear on this. The decision to close the stores is the debtors and the debtors alone.

As you heard from Mr. Ramsden, Gordon Brothers Retail Partners does not advise generally on the restructuring. The primary authority rests with the company. The debtors selected Gordon Brothers Retail Partners for its experience, and they've been working with them to close stores for some time.

As you heard from Mr. Ramsden, they got strong results, 25 percent higher, and they continue to have a good working relationship based on those results. Mr. Ramsden's testimony also shows that entry into the MSA was in good faith, and that the roles of the affiliates are not influencing the liquidation at the closing of stores.

To upend the established practice in this

district, that store liquidators are not professionals, would be incredibly harmful to the estate. As you heard from Mr. Ramsden, it would be disruptive. And frankly, they would have no viable options, given that those Tiger and Hilco, affiliates of Tiger and Hilco, are also lenders.

So for those reasons, the reasons set forth in our reply, we believe the objection should be overruled and consistent with precedent that a store liquidator is not a professional for purposes of Section 327. And we submit that the record adequately reflects that this is a sound exercise, the debtor's business judgment to assume the consultant agreement with GBRP.

THE COURT: Good afternoon, Mr. Alberto.

MR. ALBERTO: Good afternoon, Your Honor. Justin Alberto, Cole Schotz, proposed co-counsel to the official committee of unsecured creditors. I have a couple points, Your Honor.

First, as Mr. Piraino noted at the outset, the committee is resolved on this motion. We thank the debtors and their advisors for working constructively with us. We have no outstanding issues, but I do rise on a substantive basis, as well. First, to clean up something on the record, I believe Your Honor asked earlier whether or not Hilco played any other roles in Brookstone.

At my prior firm, I was counsel to the Brookstone

committee. Hilco was selling FF&E there, much like Gordon Brothers is doing so here. So there was some overlap. I would encourage Your Honor to read Judge Shannon's opinion there. I think it is spot on. He found four of the six First Merchant factors favored that Hilco is not a professional under 327A. I believe that the same calculus applies here.

Also, practically, Your Honor, I think any benefit to overturning Brookstone is already captured by what I consider a safety valve here of the UCC's challenge period. Gordon Brothers is an affiliate of 1903P, which you have heard today, and the DIP order that you're going to be asked to approve later today, paragraph 42, and specifically, footnote 6 defines a challenge as "asserting or prosecuting any avoidance, action or any other claims, counterclaims or causes of actions, objections, contests or defenses against any creditors or" importantly, "their respective subsidiaries, affiliates, officers, directors", and the list goes on.

I do believe that there is a built in safety valve here, notwithstanding what this order may or may not say. The committee retains its challenge rights. If we were to find something nefarious, not to suggest that there is, but again, any benefit of overturning Brookstone at this juncture, which I think is inappropriate anyways --

THE COURT: I don't think I have the authority to overrule Brookstone. Brookstone is Brookstone.

MR. ALBERTO: Judge Shannon, you're right

THE COURT: I don't have any authority to do so.

MR. ALBERTO: (Inaudible) Your Honor. It's a fair point. I will say, my last point, Your Honor, the downsides here to not finding -- not approving this would be immense. The disruption to the GOB process is one thing, but to get in the new liquidator. But in the alternative, if the debtors were to run this process at the 500 stores themselves, you heard Mr. Ramsden testify that they were receiving 25 percent less in proceeds, which I think is significant and is a downside the committee is not willing to risk it.

THE COURT: Thank you. And I should add, my making that statement didn't mean I was ruling. I was just saying that Judge Shannon's ruling is not precedent on this court. Ms. Casey?

MS. CASEY: Again, for the record, Linda Casey on behalf of the United States Trustee. Your Honor, to start with, we certainly understand Brookstone and Brookstone's ruling. One of the first things I was going to say is, unlike what the debtor's brief says, we're not asking you to overrule it because it is not binding precedent on this Court. It is just a ruling (inaudible).

On the facts, it is true that the Court in that

case noted that they could become a lender or a purchaser, not that they were. And my understanding of the facts of that case, at least as of the time that it was approved, that they were neither a lender nor a potential purchaser.

Your Honor, the United States Trustee disagrees with that ruling, and we disagree with the argument made by the debtors today that to be a professional, you have to be specifically on the restructuring, and only the restructuring, and the main person on the restructuring.

I don't think if they had Guggenheim helping to sell as a going concern the live stores and had a different investment banker selling the online store, that they could carve it up that neatly and say, well, one's helping with the restructuring and the other one's not helping with the restructuring. One's helping with the reorganization and one's not helping with the reorganization.

In Brookstone, the facts were the same, that the judge found that this is not ordinary course, that the store closing sales are a function of bankruptcy. They are different than the store closing sales that occurred pre-petition.

Your Honor is entering an order that allows different rules and regulations to govern them instead of having about 50 in a year, they're having about 550 in a compressed time period. To quote Judge Sanchez, a

liquidation is a reorganization and it is, in fact, necessary. They are selling the underperformed stores, underperforming stores, specifically to maximize the value of the performing stores in the going concern business.

So it is part of their strategy. Their strategy to reorganize is to sell the underperforming stores, excuse me, to close the underperforming stores and sell the overperforming stores.

You also heard testimony that they clearly have the expertise and that they have maximized the value of the debtor's assets, which is clearly a Trustee duty here, by providing a 25 percent premium over the debtors doing it themselves.

You've heard that while the debtors maintain the ultimate authority on the services to be provided, the consultation regarding condensing inventory, the consultation regarding the cadence of prices, the consultation regarding advertising, that because of their expertise, it is, at least as to two of them, I believe the testimony was they have not overruled the (inaudible) cadence of pricing or the advertising, and that the condensing of the inventory is a collaborative basis with store-level employees.

So we do think that that shows that they are a professional, that they are helping the debtors in the organization, that they are working on a Trustee duty of

maximizing the value of the assets, that they are using their expertise, and they are doing work that is not within the ordinary course of the debtor's business.

It is also important that a professional be acting in a fiduciary capacity for the benefit of all creditors. And when you have a professional, assuming they find in our favor that they are a professional, who has secured claims, administrative priority claims, and general unsecured claims, and are in control of the sale of the assets and the maximizing of the value of the assets, and potentially could come in and purchase the assets through a credit bid or otherwise, there's just too many roles to say that they are being -- that they are capable of acting in the best interest of the creditors.

If Your Honor were to disagree with us that they are professionals, we also, as stated in our brief, that it is not an exercise of their business judgment to have a consultant in charge of the sales of assets that may also purchase the assets and that may also have conflicting agenda with being a secured creditor and administrative creditor and a priority and an unsecured creditor.

And in any event, our last request is even if Your Honor were to overrule the two of those, at a minimum, they should not be allowed to be a purchaser of the assets when they are in control of the sale of the assets and that just

prevents that from being the two hat, where the one hat might be working for the benefit of their other role rather than the benefit of the estates.

THE COURT: Are you talking about a purchase of assets that are assets remaining as a result of GOB sales, or are you talking about a purchaser in the context of the proposed sale process run by Guggenheim?

MS. CASEY: I think my client's position would be all of it. Their role in consulting on store closings, how to close the stores, you know, infects everything. At a minimum, I think, clearly the assets that are left over, they have so much control over the sale process at the stores. But in general, they are part of the team who is getting these debtors to the organization finish line by closing the sales, the stores that cannot be sold as a going concern, and we don't think they should be allowed to be a purchaser.

I would like to point out that they are authorized to negotiate side letters with landlords and they're getting their expenses, including their attorney's fees, paid for that negotiation with side letters. And that certainly seems like something a professional would do. And they are authorized to retain an auctioneer, which is, of course, expressly (inaudible) the Bankruptcy Code as a professional that needs to be retained.

So we do think, again, that Brookstone was wrongly

decided and that they are a professional and that the motion should be denied.

THE COURT: Thank you.

MS. CASEY: Unless Your Honor has any further questions.

THE COURT: No, thank you. Not right now.

MR. FOX: Good afternoon, Your Honor. Steven Fox, Riemer & Braunstein on behalf of Gordon Brothers Retail Partners, the proposed consultant subject to this motion.

I rise only to speak as to the last point raised by the U.S. Trustee with respect to the ability of Gordon Brothers Retail Partners, as distinct from any other entity, to participate in the debtor's sale process.

Your Honor, as you will hear, I'm sure, from the debtor's presentation on the bidding procedures motion being conducted by the debtors in consultation with Guggenheim, Gordon Brothers Retail Partners plays no role whatsoever in either the marketing, negotiation, or sale of any of the assets that are not subject to the store closing sales. That process is being run entirely separately by different advisors to the debtors, and we play no role in governing, directing, or consulting in connection with that process.

To the extent the U.S. Trustee suggests that any Gordon Brothers-affiliated entity, including GBRP, should be restricted from participating in a process not affecting the

store closing sales simply is inconsistent with the ultimate goals of the estate, and that is maximizing value of all of the assets.

That sale process will be conducted in a competitive manner under the direction of the debtors and its other advisors and to the extent that GBRP or any of its affiliates wish to participate in that process, it would do so openly, notoriously, with full transparency and full disclosures to all parties in interest in the estate, including the debtors, the committee, and the U.S. Trustee, and the lenders.

If we are participants in that process, don't know today if we will or won't be, but if we were to be a participant in that process, it is ultimately the debtor's determination as to who is or is not determined to be the successful bidder. I don't see any circumstance where it would be fair to conclude today that we should be precluded from participating in that process where all parties and interests are preserved until a final hearing on the ultimate successful bidder, which will come at a later date at a hearing to be held before this Court.

And if any party has an objection at that time as to our participation, if we were to be determined to be a successful bidder, that would be the appropriate time to raise it, not today, in connection with the store closing

motion, which has nothing whatsoever to do with the other part of the estate, and that is the efforts by the debtors to achieve a going concern sale.

THE COURT: And what is GBRP's position with respect to store closing sale assets?

MR. FOX: I'm sorry, Your Honor, I didn't hear that part.

THE COURT: What is your client's position, GBRP's position, with respect to the ability to purchase assets as a result of the store closing sales?

MR. FOX: There, too, Your Honor, while it is atypical that there would be any inventory left at the end of the store closing process, that would be (inaudible) by any third party, typically that process involves either a bulk sale or an abandonment of inventory. As the witness testified, it would be of highly de minimis value at that point. It will have gone through a multi week process of being marketed to your average consumer who found no interest in it.

So it would be unlikely and atypical for a consultant such as GBRP to purchase, for lack of a better term, without intending to disrespect the debtors the (inaudible) left in the stores. No different than we wouldn't be -- it would be atypical for Gordon Brothers or any other liquidator in its position to purchase any

remaining fixtures in those stores.

And you have heard at the interim hearing, and you see in the proposed order all the abandonment procedures with respect to fixtures because it's not cost effective or value additive to remove those to another location and trying to resell them elsewhere.

So as I said, it would be very atypical for that to happen. But here, too, Your Honor, if it ultimately is determined by the debtors, after a presentation of an offer by GBRP to buy those assets, it's the debtors business judgment at the end of the day as to whether that's a reasonable proposal to accept or not.

And I would assume, at the risk of assuming anything, that that would -- determination by the debtors would be in consultation with its other advisors, its counsel, the committee, and the lenders as to what's the most value maximizing disposition of those assets at the end of the day.

So we don't think it would be in the interest of the estate to preclude us from doing that. And it certainly is, I think, inappropriate at this stage from the anticipatory perspective to limit the estate's options at this stage of the day. I'm happy to respond to any additional questions, Your Honor.

THE COURT: I don't have any. Thank you.

MR. FOX: Thank you, Your Honor, for the opportunity to be heard.

THE COURT: Does anyone else wish to be heard?

MR. PIRAINO: Your Honor, seeing no additional parties, debtors just had a couple of additional points to make.

THE COURT: Okay.

MR. PIRAINO: First, obviously, the debtors believe that Brookstone was correctly decided, but ultimately the test is First Merchant, which Your Honor has applied in this very Court a little over a week ago. And we believe that those factors strongly weigh in favor that GBRP is not a professional.

Importantly, all of the restructuring strategy, as Mr. Ramsden testified, it comes from the debtors. GBRP is not dictating these cases by any means.

Also, the continuation of the going concern sale. Sorry, the going of the business sales. Sure, they were on a smaller scale before the petition date, but it's one of the factors. And that's why the First Merchant test. It's not a -- it's a scale. And you think ultimately it does weigh in favor that there were stores that were sold pre-petition -- or sorry, stores that were liquidated pre-petition.

And just to touch on something that Ms. Casey raised, the fact that Gordon Brothers has had such good

results, frankly, should be a good thing and something that in the debtor's business judgment, any service provider or contractor or third party that we're working with should be adding value to the estate.

So frankly, we continue to believe that just underscores why it's within the debtor's business judgment to assume the consulting agreement. So happy to answer any questions Your Honor may have.

THE COURT: I don't have any other questions.

MR. PIRAINO: Thank you, Your Honor.

THE COURT: Okay. I'm going to take this matter under advisement. And I will either rule later today or tomorrow morning.

MR. PIRAINO: Thank you, Your Honor.

THE COURT: Not -- or tomorrow. I don't want to say the morning. I have a calendar tomorrow, but sometime tomorrow.

MR. PIRAINO: Understood. Thank you, Your Honor.

MR. PEPPIATT: Good afternoon, Your Honor. Jonah Peppiatt of Davis, Polk & Wardwell on behalf of the debtors.

Before we dive into the bidding procedures motion, I did want to briefly return to Docket No. 563, which is a certification of counsel with respect to the utilities order.

THE COURT: Yeah.

MR. PEPPIATT: Your Honor was, of course, correct

in reading those section references, and the correct references are Sections 16(a) and 17, not 14(a) and 15. So we'll correct that and submit a revised order.

THE COURT: Okay, perfect. Thank you, and we'll get that entered.

MR. PEPPIATT: So with that, Your Honor, we'll turn to Docket No. 18, the bidding procedures motion, which is Item No. 14 on the most recent amended agenda, which is filed at Docket No. 562.

If Your Honor is okay, I would just like to take a brief moment to give an overview of where we are with respect to the order generally and the resolutions --

THE COURT: That would be fantastic. Thank you.

MR. PEPPIATT: -- before we get to evidence and argument.

So as reflected in the agenda, there were a number of objections received by the debtors, both informally and filed on the docket. And I'm pleased to report that over the last several weeks, the debtors have been able to consensually resolve all of those objections, save one, which is the objection of the United States Trustee filed at Docket No. 494.

A number of the resolutions that we reached were through changes to the order, a revised version of which was filed last night at Docket No. 558, along with a black line

to the previous revised proposed form of order that was filed at Docket No. 495 on October 15th.

Your Honor, I have both an incremental and a cumulative black line here, if you would like one, or if you have your own.

THE COURT: I have 558 in front of me, so --

MR. PEPPIATT: Okay, 558 should be good. I was not planning on going through sort of every single change in the order. I'm just going to highlight a few things --

THE COURT: Okay.

MR. PEPPIATT: -- and then, of course, if Your Honor has any questions.

With respect to two objections that were filed on the docket, one was filed by 1600 East Chase Parkway Leasing at Docket No. 237. Your Honor may have seen that was withdrawn at Docket No. 536. Another was filed by American National at Docket No. 246. And counsel for American National has told us that that objection is likewise resolved, and then I'll come back to the resolution with respect to the committee's objection in just a moment.

Before doing that, I did want to note that, importantly, there have been a number of changes to the sale timeline for the debtor's bidding procedures as is set forth in the revised proposed order. I won't go through every single date and deadline, but I will note four key dates for

Your Honor for the record.

THE COURT: Okay.

MR. PEPPIATT: As Mr. Resnick mentioned, the bid deadline is now this Wednesday, October 23rd, at 5:00 p.m. Eastern. The auction will be held a week from today. That's Monday, October 28th, starting at 10:00 a.m. Eastern. The deadline to object to the sale transaction, along with assumption assignments and cure objections, is Monday, November 4th at 12:00 Eastern, and the sale hearing is scheduled for Friday, November 8th, at 10:30 Eastern.

In addition to changes to the timeline, Your Honor, there have also been various modifications to increased notice periods, provide some more specificity around adequate assurance, and how and when it will be provided, and certain other changes, all of which were negotiated and agreed to with the committee, the U.S. Trustee, and various other stakeholders, including a substantial number of the debtor's landlords.

So with that, Your Honor, I'll briefly turn to the resolution with the committee that was reflected in the revised proposed order filed last night.

The revised proposed order reflects a key change, which is with respect to the bid protections. And that change is that those bid protections will only spring into effect and become payable if the stalking horse bidder

obtains commitment letters for the financing of their purchase by Wednesday's bid deadline.

So if that does not happen, the bid protections are not payable. We've been in close contact with the stalking horse bidder. We understand that it and its financing parties are extremely close on the financing and that they're sort of at the stage of minor issues being closed out.

THE COURT: When is -- it's due by Wednesday?

MR. PEPPIATT: By Wednesday at 5:00 p.m.

THE COURT: This week, correct?

MR. PEPPIATT: Yes. Correct. So that resolved the committee's remaining objection.

I'll also note, just for the record, there was an amendment to the APA that was filed at Docket No. 495. There were three changes there. One was to extend the deadline for the entry of the bidding procedures order under the APA to tomorrow, October 22nd. The second was certain clarifications with respect to the designation of contracts. And the third was an increase to the expense reimbursement provided for in the APA from 1.5 million to 2 million, which is reflective of the additional time that's been built into the milestones and the additional work that the stalking horse has had to do.

So all of that is to say, Your Honor, that we've

resolved the committee's issues and many other parties' issues, and we're here before you with just a single unresolved objection.

And with that for evidence and for the direct examination of Mr. Rifkin, I would cede the podium to Mr. McClammy, once again, to take his testimony. Unless Your Honor has questions on the order or the other matters I just covered.

THE COURT: No, I will tell you, I am struggling very much in this case with a stalking horse who has, essentially, got a contingent commitment as to why this isn't being heard with respect to bid protections at a later hearing. And that later hearing, there's a hearing in this case virtually every week for a month.

And so I'm finding the relief that you're seeking, while I, as a fundamental principal, have no issue with stalking horses and bid protections, and I very much appreciate when parties collaborate and resolve issues. What I'm struggling with here is how this fits into O'Brien, when I don't have a firm commitment from a stalking horse bidder that if I had this hearing on Wednesday with a firm commitment, it would be very different factually.

MR. PIRAINO: Understood, Your Honor. And that is why -- one of the reasons why we got to the resolution we got to with the stalking horse, which is that if there is no

committed financing on Wednesday by the bid deadline, the stalking horse protections do not spring into being at all. But understood, and we'll revisit that, of course.

THE COURT: So I just want to -- I want to be --

MR. PEPPIATT: Understood, Your Honor.

THE COURT: -- candid so you know where my head is going into this.

MR. PEPPIATT: Thank you, Your Honor. And with that, I'll cede the podium for Mr. McClammy.

MR. MCCLAMMY: Thank you. For the record, Jim McClammy of Davis Polk on behalf of the debtors. At this time, Your Honor, we would like to call Mr. Adam Rifkin to the stand.

THE COURT: Okay, certainly. Again, could we re-employ the broadcasting policy? Thank you.

THE WITNESS: Hello.

THE COURT: Hold on one second, sir.

THE COURT REPORTER: Please raise your right hand. Do you affirm that you will tell the truth, the whole truth, and nothing but the truth to the best of your knowledge and ability?

THE WITNESS: I do.

THE COURT REPORTER: Please state your full name and spell your last name for the record.

THE WITNESS: Adam Rifkin. R-I-F-K-I-N.

THE COURT REPORTER: All right, thank you.

THE WITNESS: Yep.

MR. MCCLAMMY: Thank you. Your Honor, also, as part of Mr. Rifkin's direct testimony, so we don't have to rehash everything, Mr. Rifkin did submit a declaration. It's found at Docket No. 197 in connection with this motion. And I would like to move to have that declaration admitted into evidence.

THE COURT: Okay. Does anyone object to the admission into evidence of the Rifkin declaration in support of bid procedures at Docket 197? Okay. It is admitted.

(Debtor's 2 entered into evidence.)

MR. MCCLAMMY: Thank you, Your Honor. May I approach the witness with a copy of the declaration?

THE COURT: Yes.

MR. MCCLAMMY: And would Your Honor like a copy as well?

THE COURT: Certainly.

THE WITNESS: Thank you.

THE COURT: Thank you.

MR. MCCLAMMY: Thank you.

DIRECT EXAMINATION

BY MR. MCCLAMMY:

Q. And, Mr. Rifkin, are you familiar with the document I placed in front of you?

A. Yes, I am.

Q. And can you tell us, please, what that document is?

A. It is my declaration.

Q. Okay. And have you reviewed that declaration since it was submitted?

A. I have.

Q. And is there anything in that declaration that you would wish to change or modify?

A. Not at this moment, no.

Q. One thing I will point out to you, if you take a look at, please, paragraph 11.

A. Yes.

Q. Okay. Those are some dates and some schedules. Have any of those deadlines changed?

A. I believe they have. As we stated before, I apologize. Yes. I didn't -- I thought we were not rehashing. So, as you said, so, yes, those dates have changed per your colleague that just spoke.

Q. And other than that, is there anything in your declaration that you wish to change or modify?

A. I don't believe so.

Q. Okay. Thank you. And just so we can hear it, as part of this process today, you work with Guggenheim Securities, correct?

A. I am. I'm a senior managing director of the firm. I've been there since 2013.

Q. And can you just give a general description of what your role is at Guggenheim?

A. Yes, as I said, I'm a senior managing director. I am in our retail consumer investment banking. I work on mergers and acquisitions, capital raising, and strategic matters for clients in the retail sector.

Q. And as part of your job and your firm's role, have you been involved in the negotiation of bidding procedures?

A. Yes, we're involved in the negotiation of bidding procedures, and our firm and my colleagues and partners have been involved in the sale process that has been ongoing for Big Lots.

Q. And how often would you say that there's a stalking horse bid that's part of the bidding procedures process on the matters that you and your firm work on?

A. The goal is all the time to have a stalking horse bidder, given some of the strategic benefits it brings to the estate. So that was a goal as part of our process and our objectives.

Q. And before we talk about specifics in this case, you mentioned that there's a benefit to having a stalking horse bidder in general. Can you explain that, please?

A. Sure. The benefit of the stalking horse, it

provides clarity to the estate and the stakeholders, it provides a floor, sort of valuation and certainty, just overall, of a continuing entity for Big Lots, for vendors, other constituents, and other stakeholders.

Q. And you, specifically, have you been involved with the Big Lots restructure?

A. Yes, I have been involved, yes. From the very beginning.

Q. And what's your role with respect to Big Lots?

A. I'm one of the senior partners at the firm that have been responsible for advising and running the process, interacting with the company, interacting with potential third parties interested in the process, the diligence process, the negotiation process, and also to be the related activities.

Q. Okay. So are you familiar with the bidding procedures that have been agreed to here?

A. I am familiar with them.

Q. And are you familiar with the stalking horse APA (inaudible) agreement?

A. Yes, I am.

Q. Were you involved in the negotiation of that stalking horse APA?

A. Me and my colleagues and obviously legal counsel of the debtors and so on.

Q. And specific to this case, in your view, was it important to have a stalking horse bidder for these proceedings?

A. Yes, it was very important. Obviously, the retail sector, there's always volatility, there's lots of noise out in the retail sector. So it was very helpful in the process and to get, as I said before, provide certainty and to provide some clarity on that.

This company, you know, there's an opportunity to sell this company, and it actually has been helpful to driving additional interest once we had a stalking horse announced at the time of filing for bankruptcy.

Q. And you mentioned that a stalking horse was announced. Who was announced as a stalking horse?

A. Nexus and its affiliates. I don't have the official name, but the Nexus private equity firm.

Q. And what does it mean for Nexus to be the stalking horse bidder?

A. It means they've made a commitment to try to consummate the transaction that has a real interest, they've committed interest, and dedicating tremendous resources to getting to the finish line, putting financing together for -- to close on a transaction of the company.

Q. And are you familiar with the concept of bid protections?

A. I am.

Q. And what are they? Bid protections are a way to keep people -- or keep a party focused on getting to the finish line in a transaction. And I'll stop there. So keeping people focused and shows high desire to get to the finish line at the agreed upon terms.

Q. And were there certain bid protections provided to Nexus here?

A. There were certain bid protections. Those were in negotiation.

Q. Okay. And do you recall what they were?

A. There was all -- in terms of their specifics? Or there were lots of conversations, negotiations throughout.

Q. Ultimately, what was agreed to?

A. In terms of?

Q. Of the bid protections.

A. Oh, I'm sorry. Of expense reimbursement and specific -- there was expense reimbursement. There was a breakup fee, and there were certain protections associated with if there was a breach of reps and warranties.

Q. And being someone who was familiar with the negotiation process, did Nexus require those bid protections in order to serve as the stalking horse here?

A. Yes, there was lots of conversations, and Nexus has been clear from the very beginning that if they were

going to serve as -- they wanted to serve as the stalking horse, but along with that came -- they were not going to go forward with any -- without these big protections. There was a robust negotiation process with them on this.

Q. Are you aware of anyone else who would have stepped forward to serve as the stalking horse here without any bid protection?

A. No. I mean, there was no one else who submitted or expressed an interest in serving as the stalking horse at the time, despite repeated conversations with -- I think -- I forget how many parties are outlined in here that we went to on a pre-petition basis, but none of them were interested in becoming a stalking horse. None of them told us, or none of them delivered a draft of an APA or anything expressing interest in being a stalking horse.

Q. And I believe you may have mentioned this already, but are bid protections common as far as you --

A. They're customary and usual in transactions of this nature. Absolutely.

Q. And do you believe that the bid protections that are provided here are customary?

A. I believe that they are customary and usual, yes.

Q. Okay. The stalking horse bid that Nexus has provided, do you have any sense yet as to whether or not that's been helpful to the process here for Big Lots?

A. Has -- yes, it has absolutely been helpful. There has been increasing amount of interest once we filed with stalking horse, and that information was made to the public, and there's been increased, you know, increased amount of interest by various strategic and financial parties that became increasingly more serious about digging in, spending time diligencing and so on to see if they could move forward themselves with an acquisition of the company.

So, yes, it provided the competition that we were looking for in our process.

Q. There's been mention of the fact that this stalking horse bid has been contingent on obtaining financing. Do you recall that?

A. The stalking horse -- yes.

Q. Are the bid protections payable to Nexus, even if it were unable to obtain finances?

A. No, I think that was a change that was just made that was spoken about a few minutes ago. If Nexus does not deliver the financing, then Nexus does not get any of those big protections.

MR. MCCLAMMY: Thank you, Your Honor, I have no further questions at this time.

THE COURT: Okay, thank you. Any cross examination? Ms. Casey?

MS. CASEY: For the record, Linda Casey on behalf

of the United States Trustee.

CROSS EXAMINATION

BY MS. CASEY:

Q. I just want to make sure. I'm not sure I heard all of the benefits of having a stalking horse.

A. Sure.

Q. Am I correct, one of the benefits is it provides a floor to the purchase price by having conducted depreciation valuation?

A. It provides certainty and floor, yes.

Q. And it provides certainty to stakeholders that the debtors are going to be selling their assets and the enterprise will continue to operate.

A. I think it provides a floor that they're somewhat interested in buying the whole business to create a certain level of competition at the next stage in the process.

Q. Was there anything else? I thought that was the two that you had stated? Was there --

A. I think those are the primary benefits.

Q. Okay. The purchase price is -- are you familiar with the purchase price?

A. Yeah. Generally, yes.

Q. The purchase price, according to your declaration, is two and a half million in cash plus a defined term debt payoff amount.

A. Yeah.

Q. What is that debt payoff amount? Is that 100 percent or is that a number that is negotiated between the purchaser and the lender?

A. I believe it's 100 percent payoff, but I believe it's a negotiation between -- it is 100 percent payoff and a negotiation between Nexus and exit financing and so on. If that's your question.

Q. So could that number fluctuate?

A. If there's a negotiation on exit between the Nexus and the creditors, they could negotiate such a thing, I guess.

Q. And by exit, are you talking about that credit facility that they're --

A. All their -- all their -- yes, the credit facility, the outstanding debt and so on, sure.

MS. CASEY: I have no further questions, Your Honor.

THE COURT: Anyone else? Any redirect?

MR. MCCLAMMY: Briefly, Your Honor, just maybe one or two questions. For the record, Jim McClammy of Davis Polk for the debtors.

REDIRECT EXAMINATION

BY MR. MCCLAMMY:

Q. Mr. Rifkin you were talking about some of the

benefits of having a stalking horse bidder and how that might set the floor with respect to bidders in the bidding process. Do you know whether or not there were benefits, for example, with respect to other constituents in these cases of having the stalking horse bidder online, for example, with respect to vendors?

A. In this situation?

Q. Yes.

A. Oh yes. I'm sorry. When I talk about -- I said, I think, in what I said before, constituents, clarity, certainty of a transaction that benefits the vendors, stakeholders, and other sort of various sort of parties around the estate. So, yes.

Q. And are you aware of any particular benefits with respect to the vendors here, or discussions with vendors with respect to the stalking horse bid here?

A. I think you have -- I don't interact directly with the vendor, so I think it is. I think vendors, in general, like the fact that there is an acquisition of the company by another party to provide longevity for a business and so on. So I think that's probably -- that is a benefit here to the vendors, but you have to ask vendors directly on that.

MR. MCCLAMMY: Thank you. No further questions, Your Honor.

THE COURT: Thank you. You're excused, sir.

THE WITNESS: Thank you, Your Honor.

MR. PEPPIATT: Your Honor, once again, for the record, John Peppiatt of Davis Polk on behalf of the debtors. I just wanted to note that there's a sort of dichotomy here between the argument around the issues Ms. Casey raised that we'll get to, but also there's a separate issue of the conditionality of the financing and when the bid protections come into being. So I propose to address the argument first, and then we can come back to that point if that's okay with Your Honor.

THE COURT: Okay.

MR. PEPPIATT: So as Your Honor noted, we filed our reply last night rather late at Docket No. 559. I won't repeat every argument laid out in that reply, but I'll go into maybe a bit more detail than I otherwise would have.

Fundamentally, in our view, the question of whether bid protections constitute actual and necessary expenses of the estate is a question of weighing benefit and risk. The debtors in the exercise of their business judgment determined that the benefits of entering Chapter 11 with the stalking horse bid, including the bid protections as they were drafted and the conditions in which they are payable, provided a substantial benefit to the debtors estates that outweighed the attending costs.

The benefits provided by the stalking horse bid,

inclusive of the bid protections, in our view, fall squarely within the parameters set forth by the Third Circuit in O'Brien -- in the O'Brien Environmental Energy. As that court said, such inquiry stems directly from Section 503(b)(1)(A), which requires that an expense provides some benefit to the debtor's estate.

The Third Circuit has also made clear that there are three primary ways to satisfy that 503(b) standard. The first is found if assurance of a breakup fee -- well, if assurance of a breakup fee promoted more competitive bidding, such as by inducing a bid that would otherwise not have been made and without which bidding would have been limited. That's Energy Future 904 F.3d. 288 at 537.

Second, if the availability of breakup fees and expenses were to induce a bidder to research the value of the bidder and convert that value to a dollar figure on which other bidders can rely, that's another pathway to a rate fee being an administrative expense, and the third --

THE COURT: Do we have a dollar figure here that other bidders can rely upon? Do we have a dollar figure with certainty?

MR. PEPPIATT: Yes, Your Honor, the dollar figure is.

THE COURT: We have a number, right? But that number is subject to financing, is it not?

MR. PEPPIATT: That number is subject to the Nexus obtaining financing commitments, but they are committed -- Nexus is committed to getting the financing at that number, and they lose the bid protections if they don't hit that number.

THE COURT: How do other bidders know what the number is? The bids are due the same day that Nexus is supposed to get a commitment, correct?

MR. PEPPIATT: Correct.

THE COURT: So how does this play to other bidders?

MR. PEPPIATT: So there is a total dollar figure that is associated with the Nexus bid, and another bidder coming into the process has to beat that bid by the minimum overbid that's set forth in the bid procedures. So that number is known, and the minimum overbid is what the next bidder has to hit. The Nexus bid is the floor.

There's a question of whether Nexus has obtained that financing, but that financing has to be committed by the bid deadline, and then the next bidder coming in will have to satisfy the minimum over bid. So that's where the floor is set.

THE COURT: So they have to meet a minimum overbid even if the financing isn't available for Nexus. So Nexus says it's going to get $750 million, right? The next bidder

has to overbid the 750 plus two five, plus the minimum bid increment. Not knowing whether or not Nexus has the finances, whether it's -- is it even a qualified bidder absent knowing whether they have the money?

MR. PEPPIATT: So the debtors (inaudible). So the debtors -- if the Nexus bid did not come with that committed financing, the debtors could have the flexibility to reassess that question. And similarly, if the debtors are receiving other bids from bidders at the bid deadline, the debtors can determine whether to qualify those bids, for example, if there are issues with the financing or if it's a bid that comes in at a different price. But everybody is expecting that financing to come in.

THE COURT: Let me just ask the fundamental question. Why is this being pushed today when in 48 hours you're going to know whether or not they have financing? Why wasn't the whole schedule modified to coincide with the ability to have financing so that people know truly what the floor is?

And I understand milestones, but this -- I'm struggling very much with this process. Or why aren't they coming back later and seeking the bid protection?

MR. PEPPIATT: We could speak to the stalking horse about moving the deadline to Wednesday at 5:00 p.m. for entry of the bid procedures order and then come back to the

Court. We retain flexibility --

THE COURT: Well, I think I'd like it if you all took a break and talked about that, because to me, I mean, I'm not adverse to bid protections. That's not what the issue is here. But my concern here is very much the timing and actually having a commitment before awarding someone bid protections.

And so if the parties want to take a break to talk about this, I think it would behoove them to do so.

MR. PEPPIATT: We'll do that, Your Honor, right now.

THE COURT: Okay, we'll take a break. And feel free to knock on the door. Okay. So we're going to stand in recess.

(Off the record at 3:13 p.m.)

(On the record at 3:51 p.m.)

THE COURT: Be seated.

MR. PEPPIATT: Your Honor, one again, Jonah Peppiatt of Davis Polk on behalf of the debtors. Thank you for that opportunity to take a break just there.

We've had a chance to confer with the stalking horse and the lenders and the committee and other parties and the U.S. Trustee. And what we propose to do is we are going to move the bid deadline to Friday, October 25th, at noon. (Inaudible) --

THE COURT: Wait, I'm sorry. Friday. This Friday till noon?

MR. PEPPIATT: This Friday, October 25th, at noon.

THE COURT: Okay.

MR. PEPPIATT: We understand that Your Honor has time on the calendar this Thursday at 2:30 p.m.

THE COURT: Okay.

MR. PEPPIATT: And so we would propose to come back and seek approval of the bid procedures and the bid protections at that hearing on Thursday at 2:30.

THE COURT: Okay. All right.

MR. PEPPIATT: And Guggenheim will go out to all the parties and let them know now that the bid deadline has been changed, and they'll understand the circumstances, and they'll know that they will be able to find out prior to the bid deadline precisely whether the stalking horse has that --

THE COURT: Okay.

MR. PEPPIATT: -- (inaudible).

THE COURT: And the stalking horse will be prepared at that -- by that time. By Thursday.

MR. PEPPIATT: That's our understanding.

THE COURT: Okay.

MR. PEPPIATT: And the stalking horse and the lenders have agreed to move their respective milestones to accommodate that revised schedule.

THE COURT: Okay. And do you need a new sale date? Sale hearing date?

MR. PEPPIATT: We don't believe we do, Your Honor. We think that -- we talked to Guggenheim about this (inaudible) option on Monday, the 28th, and the rest of the key dates in the calendar would remain unchanged.

THE COURT: Okay.

MR. PEPPIATT: The only question, Your Honor, that leaves is whether Your Honor wants to hear arguments on the issues raised by the U.S. Trustee now or to hold that argument for Thursday. We're happy to go either way. And we understand the U.S. Trustee is as well. But of course, they've (inaudible).

THE COURT: Okay, I'll hear from Ms. Casey.

MS. CASEY: Thank you, Your Honor, Linda Casey on behalf of the U.S. Trustee. I do think that the objections, the other objections raised by the U.S. Trustee are different from. So if Your Honor would like to hear it, it has to do with whether the Court can approve today bid protections where there isn't a higher and better offer that (inaudible).

So if we want to hear those arguments today, I'm more than willing to go through it. I do think it's sufficiently separate from. But if you'd like to hear it all at once, it's up to Your Honor what Your Honor would prefer.

THE COURT: I don't have a strong preference. I

mean, I have read your pleadings. I'm happy to have it heard on Thursday, but I don't know if that provides a problem for counsel or I'm happy to hear it today.

MR. PEPPIATT: Your Honor, I think the reason to hear it today is that we do still have witnesses here.

THE COURT: Okay.

MR. PEPPIATT: The witness, Mr. Rifkin. So it may make sense just to go through the argument now and then if Your Honor has questions or wants to recall the witness, that can be done.

THE COURT: Okay, that's fine. And I think that will probably then streamline Thursday.

MR. PEPPIATT: Thank you, Your Honor.

THE COURT: Or -- yeah, Thursday. Thursday at 2:30. Correct?

MR. PEPPIATT: Thursday at 2:30.

THE COURT: Okay. I wrote Tuesday. Sorry.

MR. PEPPIATT: So with that, Your Honor, I guess I'll return to the standard that we were going through that was set forth in O'Brien and the three ways that the Court in Energy Future Two laid out --

THE COURT: Um-hum.

MR. PEPPIATT: -- that a stalking horse bid protection or similar break fee may satisfy the actual and necessary test. So the first, if it is -- if it promotes

more competitive bidding, such as by inducing a bid that otherwise would not have been available.

The second is that if it induces a bidder to (inaudible) to set a floor to convert value to a dollar figure to set a price.

And the third is that incentivizes a stalking horse bidder or similar party to adhere to its bid rather than abandoning its attempts to enter into the purchase.

So further, though, as the Third Circuit also stated in Energy Future Two, the Bankruptcy Court must make what is ultimately a judgment call about whether the proposed fees benefits outweigh potential harms. The U.S. Trustee appears to suggest, in its objection, that the inquiry into the benefit of the bid protections in any circumstance other than a superior proposal, as Ms. Casey just noted, must be done on an ex post facto basis when the protections are set to be paid and seem to also suggest that that was only upon request by the stalking horse bidder itself.

We don't believe that that's the right approach or consistent with precedent, even in Energy Future, the case that -- a case was only looking backwards because it was found in the context of a motion for reconsideration in a situation where the Court believed -- that the Trial Court believed that they fundamentally misunderstood the facts in that case.

In our view, the question is simple. Do the benefits of the bid protections outweigh any harms, and you think that they do? As you've heard, the debtors determined in their business judgment that it was better to have this stalking horse bid, even with those bid protections as negotiated, and to have an auction with no stalking horse.

They determined that the sale process would benefit, and they also concluded in arm's-length negotiations that the stalking horse would not provide a bid without those protections. And they have also -- they also determined that the stalking horse would be committed and remain committed to its bid with those protections. All of that is consistent with the law in the Third Circuit.

As Your Honor heard earlier this afternoon from Mr. Rifkin's testimony, all of those circumstances exist here. The stalking horse was the only party willing to serve as a stalking horse pre-petition and did condition its entry into the APA on those bid protections.

If the bid protections are not approved, the stalking horse could walk away under the terms of the APA. The stalking horse has also remained committed to its bid, and as we're all well aware, is actively and very focused on obtaining the financing that will firm up its bid ahead of what is now Friday's bid deadline.

And again, as Mr. Rifkin noted, the stalking horse

bid also provided certainty to the debtors of a critical stage in the case and to vendors and other parties, and set forth sort of a roadmap for potential bidders and a floor price for the auction.

I do want to speak for a moment about the circumstances in which the break fee and expense reimbursement in this case are payable (inaudible) issue and the objection. There's two steps before the break fee is payable.

The first is that the APA must be validly terminated because either the buyer was not selected, the debtor's entered into a superior proposal, the debtor's elected to pursue an alternative transaction, or the debtor's materially breached the APA. These are all factors that are within the debtor's control, and that's very important when looking at the case law, because in Energy Future, the Court found that issue important. There was a clear and present risk that related to a major regulatory approval in that case that no one else involved had anything control over.

The Court said that it had previously failed to recognize that this was a potentially significant harm and created a perverse incentive for the buyer, and that the risk of not obtaining that regulatory approval was so great that the fee could not have been seen to preserve the value of the estate. We haven't heard any evidence today or otherwise,

Your Honor, that suggests a similar circumstance exists here.

And the second piece of the break fee is that the debtors do actually have to close the tail transaction as not as though, excuse me, the debtor's material breach on its own is sufficient to give rise to payment of the break fee.

With respect to payment of the expense reimbursement, there are additional circumstances under the APA which we view as typical, in which the expense reimbursement may be paid and -- but that is because the expense reimbursement is somewhat different in character than break fee, in that it is related contractually and specifically to out-of-pocket, reasonable, and documented costs that are incurred by the stalking horse bidder throughout this process.

THE COURT: And that amount now is two million; is that correct?

MR. PEPPIATT: It is now two million following the amendment that was filed last week, Your Honor.

Our reply sets forth a number of recent examples where stalking horse bid protections were approved in similar circumstances. We have found a couple of additional examples of that as well. So we have a total of nine that were approved for similar circumstances where bid protections could be paid that were not limited to a superior entry into a superior proposal by the debtors.

Those are all cases that are from 2024 or 2023. So there may be additional out there from further back, but we didn't feel a need to go further back when we found those nine.

Those are In Re Sunpower Corp., Case No. 24-11649 and that's at Docket No. 290. In Re Express Inc., which is Case No. 24-10831. And that's at Docket No. 414, 427, and 471. Apologies. There are three places where it comes up, if you have to trace it through.

And I'll note that in the Express case, the specific circumstance of a seller breach of the APA was one of the factors. In the Sunpower case, it was not -- (inaudible) was not specifically enumerated, but other circumstances that were not just a superior proposal, such as the debtors entering into an alternative transaction were present.

In In Re Water Gremlin Co. That's Case No. 23-11775, Docket No. 152. That was also bid protections that were payable on a seller breach. In Re Zymergen, that's Case No. 23-11661, Docket No. 194, again, payable upon seller breach. In Re Unconditional Love. That is Case No. 23-11759. And that was similar to Sunpower case where it was closing of an alternative transaction, but not necessarily a superior proposal that triggered the break fee.

In Re Yellow Corp., Case No. 23-11069 at Docket

No. 624, again associated with seller breach. I'm almost done, Your Honor.

THE COURT: No, it's okay.

MR. PEPPIATT: Just three more.

THE COURT: Take your time.

MR. PEPPIATT: In Re Virgin Orbit Holdings, that's Case No. 23-10405 at Docket No. 326. And again, that was seller breach. Slightly more specific, seller breach related specifically to inaccuracy of reps and warranties, but nonetheless seller breach.

In Re AD1 Urban Palm Bay. That's Case No. 23-10074 at Dockets No. 284 and 298, again tied to both seller breach or reps and warranties. And the last case is In Re Nova Wildcat Shur-Line Holdings, Inc. That's Case No. 23-10114, again tied to seller breach.

I will also note that in each of those nine cases, in some of them there were no objections. In three of them there were objections, but none of the objections, including in one case where the U.S. Trustee objected, raised this issue. So we find it somewhat novel that the question of the ability of bid protection to be paid based on a seller breach is now coming up, and we don't think it's consistent with precedent in this court.

THE COURT: The rationale being that a seller breach is -- leads to a contract claim for breach of contract

as opposed to a protection under a sale order? Is that the argument? I just want to make sure that I -- and it's not your argument, obviously, but I can save that for the United States Trustee.

MR. PEPPIATT: Okay, Your Honor. So we believe that subject to the points we discussed earlier, which now (inaudible) financing, these are typical reasonable bid protection provisions as they relate to the break fee and (inaudible) payable in the context of, for example, a seller breach or other circumstances that go beyond, as is typical, the sale of the debtors to a -- under a superior proposal.

We, again, believe that the debtors have already benefited from the stalking horse bod and that, therefore, these bid protections are actual and necessary.

The U.S. Trustee raises two other points in its objection. The first is with respect to the super priority status being granted to the bid protections. Consistent with what we said in our reply, super priority status is not limited to funded debt financing. Section 364(c)(1) permits a claim to be afforded super priority status if such debt is not available on a priority basis.

As Judge Sontchi said on the record in the Lucky Brand case, the reality is 364(d) says what it says. Someone who is doing what a stalking horse is doing in an asset sale agreement certainly meets that criteria. And that criteria

makes it possible to then get a super priority claim if the Court finds it appropriate. That's, Your Honor, from Case No. 20-11768 at Docket No. 269.

And we submit that here, super priority status was an important part of the bargain that was reached with the stalking horse and was a condition of their stalking horse bid, and it should be approved over the U.S. Trustee's objection.

The final point, Your Honor, the U.S. Trustee requests that the fees and expenses under the expense reimbursement be subject to a ten-day notice and review period. We've gone through several precedents. We have some cited in our reply that sort of show the negative that do not have that as part of the stalking horse order. I can't say that there is no case where that existed, but we looked, and we were not able to find that limitation. And we viewed these as if the bid protections are approved, they will be Court-approved and contractually required to be reasonable, actual, out-of-pocket, and documented. And we don't think that there needs to be a further, separate review function that applies to those expenses here.

So in conclusion, looking at the evidence Your Honor heard today regarding the benefits of the stalking horse bid, it is clear to the debtors that the bid protections in this case are actual and necessary under

Section 503(b) and should be approved and the U.S. Trustee objection overruled.

THE COURT: Thank you. Ms. Casey. Well, did the committee or anyone want to be heard? I didn't mean to shut you out, Ms. Casey, but --

MR. ALBERTO: Your Honor, I'll keep it brief. Justin Alberto from Cole Schotz on behalf of the committee. The committee wants a stalking horse here. I realize that is a very generic statement here several days before the bid deadline without committed finance from the proposed stalking horse bidder.

I will say that a stalking horse purchaser retail cases sends a message to the vendor and landlord communities that help stabilize an otherwise potentially unstable situation.

We support the debtors here in their efforts, and our objection that we filed last week was very targeted with respect to the return of a deposit, not necessarily bid protections, but on balance, after looking at the concessions that have been made with respect to the bid protections and them going away if the financing is not committed between now and the bid deadline, we're satisfied that it resolves our objection.

THE COURT: Okay, thank you.

MR. ALBERTO: Thank Your Honor.

THE COURT: Anyone else? Oops, Ms. Casey? Ms. Kaufman?

MS. KAUFMAN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. KAUFMAN: Susan Kaufman for WPG Management. We filed a brief reservation of rights with respect to the bid procedures. And just very briefly, my co-consul Ronald Gold of Frost, Brown & Todd is on Zoom with us, and he'd like to address the Court just very briefly with respect to our reservation or rights. He's been admitted pro hac vice.

THE COURT: Thank you. Mr. Gold.

MR. GOLD: Good afternoon, Your Honor. Ronald Gold, Frost, Brown & Todd on behalf of WPG Management Associates. Your Honor, we did file a reservation of rights in response to Docket No. 211. WPG Management has its corporate headquarters in the debtor's Granville Dublin location. We filed a reservation of rights and statement with respect to our 365(h) rights to preserve that in the event that the property is sold.

We do note, Your Honor, that last week the debtor filed its cure schedule with respect to the proposed going concern sale and did not list the WPG Management Associates lease as a lease designated for assumption and assignment. We intend to obviously pursue our 365(h) right to request adequate protection, and we intend to do that in connection

with the sale hearing. We did want to make sure the Court was aware of that.

We've reached out to debtor's counsel as well. They indicated that all matters had been resolved. While this is technically not a bid procedures matter, it has not yet been resolved, Your Honor.

THE COURT: Okay. All right. Thank you, sir.

MR. GOLD: Thank you.

THE COURT: Ms. Casey.

MS. CASEY: Linda Casey on behalf of the United States Trustee. Your Honor, start by saying what we're not asking for. We're not asking for Your Honor to say that the bid protections permitted by the APA are disallowed with prejudice.

What we are asking is that through the bid protections order, the only time where it is authorized before the auction is under the circumstances where the auction produces a higher and better offer and that higher and better offer closes.

Before I get into the legal part, I keep hearing the benefit, it provides a floor. The benefit, it provides certainty. The benefit, we know that this is going to sell. It's going to give vendors the understanding. It's going to give the committee -- they want to get their sale.

But the bid protections are being authorized in

cases where there's no sale, the expense reimbursement, specifically, where there's no sale, and the bid protections where there could be a sale that is for an amount below the floor, and that's not certainty. That's not providing the floor. That's actually providing bid protections when there's a sale that closes that is less good than this one, or that there is no sale at all.

I disagree that the reading of the case law is that only under exceptional circumstances is it in hindsight, I think the case law clearly stands, that Your Honor is put in hindsight, and that you need to have an actual and necessary benefit to the estate.

So where exactly are these bid protections and expense reimbursements permitted? The bid protections, which is seven and a half million dollars, requires two occurrences. I'll go with the second one first. That within 120 days of the failure of the stalking horse to close, that a tail transaction occurs.

And a tail transaction is either a superior proposal, which is any transaction that is superior to the stalking horse, or an alternate transaction, which is any alternate transaction, provided that the senior debt, that the secured debt is paid off. It doesn't require that extra two and a half million dollars. It's not a better transaction. It's actually less than.

So you do have a circumstance where it does not have to be a better offer procured as a result of the stalking horse, and it doesn't even have to be a superior offer. It can be a lesser offer. And those bid protections are available if the seller reaches its warrant -- its warranties or its covenants, if the seller enters into an alternative transaction, if Your Honor approves an alternative transaction, if they're not selected at the auction, and if it doesn't close as of December 31st.

But again, the sale that does have to close is not necessarily one that was procured because of the stalking horse and is not necessarily one that is a superior transaction.

The expense reimbursement previously had two requirements, but now it's down to one. And they get a $2 million expense reimbursement if it doesn't close for any reason other than a buyer breach. Any reason at all other than a buyer breach. There's no requirement that there be another closing.

So what we're saying, Your Honor, is, is it possible that they can come in and establish to Your Honor that they provided an actual and necessary benefit to the estate under any of those circumstances? It's possible. I don't know if I would say it's likely, but we'll say it's possible. Can they establish that record today? And we

would say no.

Today, the actual necessary expense is only if there is a floor and only if they, through their due diligence, through their offer of the stalking horse purchase, it induces other bidders, the debtor selects those other bidders, and the debtor closes a better offer. That's the circumstance today that you can say this stalking horse has provided an actual and necessary benefit to the estate.

All the other circumstances are ones where you might actually -- you might not be able to establish that it was the stalking horse that resulted in the alternative transaction. You might conclude that it wasn't an actual and necessary benefit for the estate.

If the benefit here, as stated by everyone, is there's a floor and there's certainty, but we're giving an expense reimbursement if it doesn't close. So there is no floor, there is no certainty, and we're giving bid protections if it closes, but not for as good of a price, then you're not getting the actual and necessary benefit.

So in the forward looking view, it should just be approved if there's an actual, better offer through the auction sale process that closes, not foreclosing the opportunity to come back and say, hey, this agreement has these other terms. And the way that facts have transpired, these other terms have been triggered, and we think we can

now, in hindsight, establish that it is actually necessary. But we don't have a record today that all of those circumstances would result in an actual and necessary cost to the estate.

As far as the cases that were cited, Your Honor, I can't really argue against bare legal orders. I don't know what happened. I don't know if my colleague didn't see it. I don't know if my colleague saw it, that there were facts and circumstances in the case where they didn't think those were likely to arise. I don't know what occurred in those cases, and I don't know, you know, the representation from debtor's counsel was that while there may have been objections filed, they weren't on this issue. So I don't know why that happened.

I also know that I have filed objections in this exact same issue. So it's not the first time, it's not a change in what's happening. And it is pretty -- in my personal experience as a U.S. Trustee, it is pretty standard that the bid protections are for the closing of a successful -- a different successful bidder. But again, under the case law, it has to be an actual and necessary cost of the estate. And the record can only establish that today if a better offer actually (inaudible).

THE COURT: Ms. Casey, I had one question about one of your arguments about review of expense reimbursements.

MS. CASEY: Oh, yes. So, Your Honor, it is a standard ask from my office that we ask to review the expense reimbursements of stalking horse purchaser fees entitled to expense reimbursement. Similar to when we ask to see a DIP lender's counsel fees.

Bankruptcy is about transparency. Administrative expenses are about actual and necessary. So we do ask that we be given, quite frankly, the committee and my office be given a ten-day review period so that if we do see something that appears to be unreasonable or otherwise should not be allowed, that we can raise that objection.

I also -- the super priority sale, there have been courts in this district who have overruled us on the super priority. I wish I could remember the case name, but it would just be a bare legal order anyway. But Judge Owens sustained our objection under the thing that -- under the ruling that they can get paid at the table, they don't need super priority status because they can get paid on the table.

Our position is that 364 says that you can get credit or incur debt under certain circumstances. It's not the same as a claim. And if 364 is read so broadly as somebody who provides a service or goods to the debtor and not somebody who is providing financing to the debtor, it renders it illogical that every party can come in and say, well, I'm not going to provide goods if I don't get super

priority status. I'm not going to provide services if I don't get super priority status.

It's written in the section that has to do with financing. It talks about credit and debt. And so it's our position that the only logical reading of this and the only way that it could realistically occur is if it's limited to financing, if it's limited to cash that's loaned to the debtor can be loaned on a super priority basis, and not anybody who creates, through their actions, a post-petition claim can get a super priority status simply by saying, I won't engage in this transaction if you don't give me that. So that's our position on the super priority status.

THE COURT: Okay. Anything further?

MR. PEPPIATT: Yes, Your Honor.

THE COURT: Okay, certainly.

MR. PEPPIATT: Just again for the record, Jonah Peppiatt for the debtors. I just wanted to make two points.

I believe Ms. Casey said when talking about the circumstances in which the break fee is payable, it's included if the transaction doesn't close as of December 31st. That's only true if one of the other circumstances of the break fee arises is also payable at that time. In other words, they can sell, say, well, outside date. That's an easy one to point to is why I'm terminating the APA. But you also have to satisfy one of the other termination factors if

you look at the language of the break fee. So I just wanted to clarify that.

And the second point I wanted to make is that there are three separate factors here by which you can satisfy the actual and necessary test. We just heard a lot about setting a floor specifically and being able to look back and determine and figure out whether the bid set a floor or not.

But I think Your Honor heard substantial testimony today that the stalking horse bid provided certainty, was very helpful in the process, that there was increased interest as a result of Nexus's competition. Sorry, of Nexus that drove the competition that the investment bankers were looking for.

And if you, for example, if you were to buy inventory, right, you bring it into a store, that inventory may not sell. Similarly here, if you bought the inventory, that can still be an actual and necessary expense even if you don't ultimately sell the inventory.

So it's possible to determine there's a benefit today, the first benefit being that the stalking horse was induced to bid, and the second being all of the interest that it drove in the process, and the third being that Nexus stayed committed to its financing (inaudible) evidence on all of that. That's all I have, Your Honor.

THE COURT: Let me ask one quick question. I think I read this, but Nexus is not an insider, correct?

MR. PEPPIATT: Correct, Your Honor.

THE COURT: Not related to any GOB consultants or anyone else in the case.

MR. PEPPIATT: That's correct.

THE COURT: Okay. Thank you.

MR. PEPPIATT: Thank Your Honor.

THE COURT: Okay, well, thank you for those comments. It's very helpful. I'll take that into consideration on Thursday when I rule on the issue.

MR. SHPEEN: Good afternoon, Your Honor. For the record, Adam Shpeen of Davis, Polk & Wardwell, proposed counsel for the debtors.

I'll be presenting what I believe is the final motion for today, Agenda Item No. 15. This is the debtor's motion seeking entry of a final DIP order, which was originally filed at Docket No. 19.

Your Honor, for the past week or so, we've been working furiously to try to resolve issues raised by various parties, both informal comments, formal objections. We're pleased to report that in advance of the hearing, we were able to resolve all but a few limited objections filed by the landlords, and even more pleased report that as of, I think, 40 minutes ago, we may have resolved all of the objections.

THE COURT: That's impressive.

MR. SHPEEN: Thank you. So we know that the UCC is supportive. The United States Trustee is not objecting here. And last night, we filed an amended proposed form of final order at Docket No. 556, including an updated approved DIP budget at Exhibit 4 to the DIP order, which I'll discuss in a moment.

THE COURT: Okay.

MR. SHPEEN: With respect to the form of order that we filed last night, we filed a black line against the as-entered interim DIP order to help aid Your Honor's review of the provisions. We wanted to just take a moment to direct Your Honor's attention to a few of the changes we made to address the (inaudible).

THE COURT: I did receive this last night, and so I appreciate it.

MR. SHPEEN: And Your Honor, we won't page identify specific provisions. Many of the changes are intended to just reflect that this is now a final order instead of an interim order.

THE COURT: Right.

MR. SHPEEN: So the first change I go to is at paragraph 13 on page 41 of the black line. Your Honor, here we added the UCC committee as a consultation party regarding amendments to the DIP facilities that materially or adversely

impact the constituencies of the committee. That was part of the resolution with the creditors committee.

On page -- also on page 41 of the black line, paragraph 14(a), this is, you know, the linchpin of our deal with the UCC as well as the deal that was acceptable to the DIP lenders. We have now amended our budget to include 7.9 million of September stub rent associated with leases rejected in September and October as being paid in two weeks during the week ending November 9th. And we increased the committee's professional fee budget by one and a half million dollars. And the payment of the 7.9 million is expressly authorized in the order, which I'll get to in a moment.

The next place I go to, Your Honor, is paragraph 23 on page 49. Your Honor, there were no changes here, but one of the landlord objections made note of the fact that it was uncertain whether the final DIP order would include language that was in the interim DIP order that was related to the fact that the DIP liens are not attaching to the leases and don’t (inaudible). So we've left that language in. So for the avoidance of doubt, we wanted to draw Your Honor's attention to that as well.

Next place I go to is paragraph 30 on page 66, Your Honor. Here, as part of the committee settlement, we've increased the investigation budget to $100,000.

Next place I go to, Your Honor, is the following

page, on page 67, paragraph 34. This is, I think, colloquially referred to as the soft marshaling language. This is language that requires lenders to use reasonable efforts to recover from shared collateral before recovering unencumbered assets. Again, this was part of the resolution with the creditors' committee.

Next place we turn is paragraph 42. Your Honor, page 72 of the black line. This is the challenge period. The deadline is now hardwired into this order as November 7th, which not coincidentally is the day before our scheduled sale hearing. And there's a mechanism by which parties can extend that deadline.

The following page on page 73, also in paragraph 42, we've added language making clear that the UCC won't be prejudiced in connection with their investigation in seeking standing as a result of the debtor being a limited liability corporation and the limited liability corporation operating agreement waiving certain claims.

Paragraph 50 is where I go to next, Your Honor. That's on page 77 of the black line. Here we've added, at the request of our credit card program provider, Comenity, that we've added language making clear that nothing in the DIP order affects their rights or the program generally.

Paragraph 51 is the Chubb reservation of rights language that was added as requested. Our insurance provider

Chubb makes clear that the proceeds of an insurance policy is only DIP collateral to the extent it's property of the debtor, payable to the debtors. And so that language is added, paragraph 51.

Paragraph 52 and 53 was added at the request of two counties (inaudible) with pre-petition tax liens. Those liens are not being primed by the DIP liens.

Paragraph 54 --

THE COURT: Excuse me, does that resolve all the taxing objections?

MR. SHPEEN: As far as we're aware --

THE COURT: Okay.

MR. SHPEEN: -- yes. Paragraph 54, similar vein, we made clear that nothing in the -- the DIP liens don't prime the rights of sureties with respect to their collateral.

Paragraph 55, this is the Texas taxing authority language where we made clear that the DIP liens aren't priming their liens to be said valid, and we're reserving amounts as adequate protection for these reported liens.

Your Honor, we were notified that there may be a taxing authority that we've left out of footnote 7, so we'll fix that --

THE COURT: Okay.

MR. SHPEEN: -- in a revised form of order. We'll

also update, Your Honor, the milestones at the end, which will have to be updated in light of what's going on with the bidding.

THE COURT: Okay.

MR. SHPEEN: And then, Your Honor, we were able to resolve a few of the landlord objections in the hallway with language that is added. One moment (inaudible) paragraph 14. Your Honor, this is on page 39 of the black line.

THE COURT: Did you say paragraph 14?

MR. SHPEEN: 14(a), yes, Your Honor.

THE COURT: Okay.

MR. SHPEEN: I'll read it. The second sentence, and this resolves the objections that were filed at Docket No. -- bear with me one moment, Your Honor. Well, why don't I read the language first?

THE COURT: Okay.

MR. SHPEEN: Your Honor, the second sentence in that paragraph reads or will be changed to read the approved budget shall be -- the approved budget shall provide for, among other things, to follow in (i), funding during the week ending November 9th, 2024, of 7.9 million applicable to unpaid post-petition rent for the month of September 2024 with respect to leases for which the effective date of rejection occurs on or before October 31st, 2024, (the stub rent for rejected leases budget).

New words -- and funding during the week ending December 7th allocable to the balance of unpaid post-petition rent for the month of September, defined term, remaining stub rent, with the debtors having authority, but not direction, to draw upon any ABL (phonetic) availability to provide for such funding subject to the terms and conditions of the ABL credit agreement. No other changes to that sentence. That makes clear that we have in the budget authority to pay the stub rent that's included in the budget.

The following sentence, starting with the debtors, the DIP agents that the committee have agreed will be revised as follows. The debtors, the DIP agents, and the committee have agreed that the debtors shall be authorized, but not directed to pay -- strike everything until the bottom of the page -- any claims for unpaid post-position rent for the month of September, 2024, with respect to leases for which the effective date of rejection is on or before October 31st, 2024, up to the amount of the stub rent for rejected leases budget. New words -- and the debtors shall be authorized, but not directed, to pay the remaining stub rent in accordance with the budget. Full stop.

So what that does, Your Honor, is it removes the conditionality that was included previously within 14(a) with respect to payment of the stub rent. And now we have budgeted payment of stub rent, which I believe resolves the

remaining landlord objections, as far as we're aware.

I believe counsel to one of the landlords --

THE COURT: Do any of the landlords want to be heard?

MR. SHPEEN: -- make a statement.

THE COURT: Ms. Heilman, good afternoon.

MS. HEILMAN: Good afternoon, Your Honor. Leslie Heilman for Ballard Spahr on behalf of the various landlords, who are referencing Docket Item 523 as well as 527, for whom we are also Delaware counsel for the (inaudible)Hopkins firm.

Your Honor, I believe collectively that is probably approximately 80-some landlords of the debtor. And, Your Honor, the resolution that has been read into the record is, I believe, accurate, except I think we were deleting the word "claims" for any unpaid -- it should be any unpaid post-petition rent attributable to the September. So it's not subject to actually having filed claims, and so we shouldn't have claims.

It is also subject to two reservation of rights, Your Honor. You know, we understand that -- we believe be subject to the ABL language is really the process in which the debtors need to draw the funds in order to fund the stub rent remaining stub rent. Your Honor, we don't know what that process is or the procedures or the terms of the ABL for that to happen. So we do reserve all rights to come back

before Your Honor, if that makes some loophole in which that they do not have to fund the remaining stub rent.

In addition, Your Honor, we will know by the sale objection deadline whether or not what the sale is going to look like and whether or not there's actually going to be sufficient proceeds in this estate in order to fund the stub rent if there is no sale. So we also reserve the right to raise objections at that time to revisit the budget to the extent what is now budgeted is no longer at the time of the sale.

I also rise to -- and I think the debtors will work with us on this, but we are moving some of the sale dates, and so some of those sale dates trigger off when landlords are going to receive information for the stalking horse bidder as well as other bidders. It's supposed to be triggered off the bid deadline, which now shortens our time by two to three days because now it's on a weekend, and it's not going to be delivered until the next business day. So we reserve our rights in that regard, Your Honor.

We still should have sufficient time to review that information prior to the objection deadline, but it does shorten our days to now seven days when we had ten. And to the extent that we do not have sufficient time to review the adequate assurance of the bidders, Your Honor, we reserve all rights to raise that at the time (inaudible). Thank you.

THE COURT: Mr. Gold.

MR. GOLD: Good afternoon Your Honor. Ivan Gold of Allen Matkins. Always good to see you.

THE COURT: Good to see you.

MR. GOLD: I represent the -- as co-counsel with Ballard Spahr, the landlords at Docket 527. I rise briefly just to first thank the debtors and the committee for working with us feverishly over the last few days and hours, including this afternoon, for -- to describe them as arm's-length negotiations. It's kind of Inspector Gadget arms at times, but we did get there, and I thank the parties for that. It would have been a fun argument this afternoon, but --

THE COURT: I know I was looking forward to it.

MR. GOLD: I'm sure you were. It goes without saying, settlements are preferred, and that's what we got. And I simply join in Ms. Heilman's comments and also the reservations of rights with respect to the sale and the sufficiency of the mechanics to achieve what we've bargained for here in paragraph 14, and as well as just to note the shortening of the timeline in the sale process.

But hopefully the circumstances allow us to work through that without any assistance from the Court. So we thank Your Honor for listening this afternoon and happy to have a resolution.

THE COURT: Well, I'm certain that the debtor's professionals will be working with the landlords. If there are issues, the Court will be available should you need the Court.

MR. LEHANE: Good afternoon, Your Honor, Robert LeHane --

THE COURT: Good afternoon.

MR. LEHANE: -- Kelley, Drye & Warren on behalf of 12 or so landlords who filed an objection at Docker 385 and echoing Ms. Heilman's and Mr. Gold's comments. Tremendous amount of work, Your Honor. And in the background what has not been mentioned is all the work going on between the debtor's real estate advisors, landlords across the portfolio who are engaged in discussions, right, working as hard as they can to try to save the company and see a go-forward process is successful here.

Well, our concerns were is the downside risk, right? What if that doesn't happen and we've got a $30 million hole to fill, right? And it seems like obviously this is a significant improvement over the former order that was revised. I echo, you know, Mr. Shpeen. We appreciate removal of the conditionality. We're still very concerned about what it means if we actually got to that place and they were subject to the terms of the ABL. So echo that reservation of rights to object to the sale but appreciate

everybody's hard work in getting to this resolution on the final DIP order, Your Honor. Thank you very much.

THE COURT: Thank you. Others.

MR. LEONHARDT: Hey good afternoon, Your Honor. Scott Leonhardt from Esbrook, P.C. Your Honor, I apologize. I represent about ten landlords. We didn't file an objection but I rise, I guess, a bit of cynicism. I don't mean to be the sole objector. I would just like the debtors to confirm that the deal with the objecting landlords doesn't result in them getting paid on their stub rent claims while all the kind of other landlords are left out to dry so to speak.

So I would just ask that all 503(b) stub rent landlords be treated the same, and I would just ask for confirmation if that's going to happen.

MS. HUMISTON: Good afternoon Your Honor, Shannon Humiston, on behalf of --

THE COURT: Good afternoon.

MS. HUMISTON: -- on behalf of Milelli Realty, Lehigh Street, LLC. I want to echo the other landlords' comments and thank everyone for their cooperation. It was our understanding that the debtor had reserved stub rents and other amounts for our client and even though their lease was not being rejected.

So like the colleague that just stood up, I wanted to also reiterate this, even though our lease is not being

rejected, it's our understanding that stub rent will be paid for us as well within the budget.

MR. SHPEEN: Your Honor, for the record Adam Shpeen for Davis, Polk & Wardwell. I just spoke to Alex Burns to confirm what I suspected to be the case which is the 7.9 million is all of the stub rent or the leases that were -- for which rejection will be effective as of this docket. So we're not picking and choosing which rejected leases we're going to pay stub rent for. That's not the case. They're all being treated equally.

Likewise, in the budget for the balance of the stub rent being paid the week ending December 7th, same principle applies, everything being treated really -- with one exception being if the landlord agrees to waive their claim for stub rent or such other treatment that obviously then we wouldn't pay pursuant to whatever --

THE COURT: Agreement.

MR. SHPEEN: -- landlords.

THE COURT: Does anyone else, in terms of a landlord, want to be heard? Okay.

MR. SHPEEN: And for the record, you know, Your Honor, I had a beautiful argument, as well, that I was eager to prosecute, but maybe we'll save that for another day or another case.

THE COURT: Listen, let me just say, if it's not

clear, I do appreciate parties working together, and I do understand that in a case with this many leases, everyone's drinking from a fire hose. I get that. And I understand you're working on tight timeframes. So I very much applaud you for your efforts in resolving these issues.

MR. SHPEEN: So unless Your Honor has any questions, that would conclude our argument on this.

THE COURT: Okay. Is there any --

MR. SHPEEN: -- (inaudible) proposed form of order, revised proposed form of order to Your Honor's chambers after this hearing, reflecting the two (inaudible).

THE COURT: Is there anyone who wishes to be heard on the financing motion or the proposed form of order?

Q. Yes.

MR. ALBERTO: Yes, thank you. Good afternoon, Your Honor. Justin Alberto, Cole Schotz, proposed counsel for the committee.

I'm not going to reiterate everything that was said. There was a tremendous amount of work, like Mr. LeHane said. Thank you to the debtors and their professionals, the landlords and their professionals and getting to a deal.

I want to echo, I want to put one thing on the record. The committee did agree to a shortened challenge period here. That, of course, presumes that the company, its advisors, as well as the lenders, will be responsive to

various discovery requests, if the committee needs, in an expedited fashion to allow the committee to do this work on an expedited basis.

The DIP order provides that the challenge period could be extended with written order of the Court or upon agreement of the parties. We don't think we're going to have to do that. Everybody, as recently as this morning and meet-and-confers last night with the debtors and their professionals, and this morning with the lenders and their professionals, seems to be cooperating.

So we would hope not to come back to you. But I did want to put out there that the shortened challenge period does assume that we will get access to information sufficient to allow us to do our diligence between now and that shortened challenge period.

THE COURT: Okay, thank you.

MR. ALBERTO: Thank you, Your Honor.

THE COURT: Does anyone else wish to be heard with respect to the motion or the proposed form of order? Okay, I hear no one. I see no hands on Zoom.

Based on the record that's been presented and the first day declaration, and with the modifications to the budget to provide for the payment of stub rent, and the resolution of all the objections to the motion, I will approve the financing on a final basis once I see the revised

order that's submitted to the Court.

The record here does establish that the debtors require financing in these cases for the administration of the Chapter 11 cases, the sale process, and to maximize recovery for stakeholders. The principal economic terms, as the declarations previously reflected, note that these terms are customary and usual for DIP financing, were negotiated at arm's length, and were the best available option.

So I find that the DIP is a sound exercise of the debtor's business judgment and in the best interest of the debtors and their estates. So I'll enter the revised order once it's been reviewed.

Are there any other housekeeping matters?

MR. REMMING: I have just -- Andrew Remming, Morris, Nichols, Arsht & Tunnell. I just have two housekeeping matters. As Your Honor probably saw, there were a few retention applications at the end of the agenda.

THE COURT: Yes.

MR. REMMING: First of all, I'd like to thank the United States Trustee for working so closely with us and cooperatively with us on the retention applications. We've now resolved all the issues, and a couple will be submitted under CoC. One has already been submitted under CoC. And then a fourth had no changes to the form of orders that we submit that -- we'll upload that order to Your Honor's

chambers this afternoon.

THE COURT: Okay. All right. And I will look at those and get them in a --

MR. REMMING: Another housekeeping matter. Does Your Honor have a preference for Thursday, whether it's Zoom or some other medium?

THE COURT: I appreciate there's a lot of parties here who would prefer to be on Zoom since the argument has been made, but I would ask that at least the objectors, which I believe is just the United States Trustee and the committee and the debtors have someone in person.

MR. REMMING: Very well. We're happy to proceed however --

THE COURT: Everyone else can be on Zoom unless you want to make a further extensive argument or something, but the evidence is closed.

MR. REMMING: That's all I had, Your Honor.

THE COURT: Okay. I am prepared to rule on the GOB sales if we could take care of that this afternoon before we leave.

So, based on the evidence presented and the Ramsden declaration at Docket No. 3, as well as the testimony of Mr. Ramsden, the Court finds that GBRP is a consultant and not another professional under Section 327(a).

The Court will allow the debtors to assume the MSA

under Section 363 in accordance with a sound exercise of the debtor's business judgment. The Court reaches this conclusion based on First Merchants factors, including the debtors maintain their store managers and district managers in the stores subject to GOB sales to oversee the stores and the process. The debtors make all decisions on which stores to close and what assets to liquidate. Although the debtors collaborate with GBRP, the debtors, through their merchandising plan team, ultimately decide, excuse me, the cadence of pricing, the movement of inventory, and all other aspects governing the GOB sale. GBRP is not involved in negotiating the terms of a plan.

The debtors historically closed about 50 stores per year through a GOB process, utilizing, in part, the three consultants at issue. And although the debtors are closing and liquidating more stores post-petition this is related to the debtor's ordinary course of business.

Mr. Ramsden testified that the debtors retain ultimate control on which stores to liquidate, the cadence of pricing, movement of inventory, and retention of employees. Although GBRP advises, the debtor ultimately has the decision making power.

GBRP has no involvement in the administration of the debtor's estate. The debtors rely on counsel, financial advisor, and their investment banker with respect to the

administration. And although GBRP has expertise in GOB sales, this factor is not dispositive. So I will enter the order when it's been uploaded.

MR. PEPPIATT: Thank you, Your Honor. We'll upload it promptly after the hearing.

THE COURT: Okay, thank you. Anything further? Okay. Thank you all very much for your time today. We stand adjourned. Safe travels.

(End of Proceedings.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Wendy K. Sawyer October 22, 2024

Wendy K. Sawyer, CDLT

Certified Court Transcriptionist

For Reliable

Exhibit C

Relevant Excerpt of *In re NEC Holdings Corp.*, No. 10-11890 (PJW) (Bankr. D. Del.)
July 13, 2010 Hearing Transcript

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 10-11890-PJW

- -x

In the Matter of:

NEC HOLDINGS CORP, ET AL.,

Debtors.

- -x

U.S. Bankruptcy Court

824 North Market Street

Wilmington, Delaware

July 13, 2010

9:32 AM

B E F O R E:

HON. PETER J. WALSH

HON. CHRISTOPHER S. SONTCHI

U.S. BANKRUPTCY JUDGES

ECR OPERATOR: MICHAEL MILLER/LESLIE MURIN

that needs to be tempered with 503(b)(9) claimants being left out in the lurch.

THE COURT: All right.

MR. PALACIO: Thank you, Your Honor.

THE COURT: Anyone else? I assume the Term B issues have been resolved?

MR. ATHANAS: They have, Your Honor.

THE COURT: Okay. Just wanted to make sure.

Let me give you some thoughts, maybe, before you reply.

MR. ATHANAS: Certainly, Your Honor.

THE COURT: 503(b)(9), the lender is not a guarantor of the 503(b)(9) or any other admin claims, and neither is the debtor. Mr. Palacio's right in that I generally have held in the past that you can run a case for the benefit of a secured creditor. It's the crime of having collateral that some people seem to say that they can't. They've got to pay the freight, and the freight is, at least -- the freight is not necessarily a tip to the unsecureds, but the freight is certainly an administratively solvent estate. And while there's not a guarantee, there has to be something other than a wing and a prayer on the payment of the admin claims. And counsel very honestly and appropriately answered the question that at least it's unclear, as we stand here, and it's quite unclear whether 503(b)(9) claims would be paid. It doesn't need to be in the

DIP budget, necessarily, but there has to be something -- and again, not a guarantee, but something, some evidence that there's a possibility -- probability that they'll be paid. Excuse me. And I don't -- I really don't see that, as we stood here today. So I don't know how you address it, but that's a thought.

Another thought is this is a position I inherited from Judge Walsh years ago, and I agree with it, which is basically you don't give a 506 waiver over an objection by the committee. And if necessary, we'll have a substantial contribution hearing -- not a substantial -- I'm sorry, but we'll have a hearing on 506(c), and in twenty years, he's never had one. So I would not be inclined to give a 506(c) waiver.

I'm okay with the milestones, I think, for the reasons I articulated with the committee, with Mr. Feinstein. I don't think I'm putting the case on a highway to a sale that's inappropriate. But Judge Walsh will decide that, and if the secured creditor calls a default based on that, I'll look on it at the merits. I don't think it's inappropriate, frankly, to give them the "leverage" at this time. They are lending money. It is their collateral at risk. It is not inappropriate for them to agree to fund a case based on certain conditions, provided they're reasonable and within the confines of the law. So as we sit here today, I'm okay with sale milestones.

The rollup, I really would like to hear more from the

C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true and accurate record of the proceedings.

Dena Page

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Reason: I am the author of this document
Date: 2010.07.16 16:38:41 -04'00'

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Dena Page

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: July 16, 2010

Exhibit D

Relevant Except of *In re Townsends, Inc.*, No. 10-14092 (CSS) (Bankr. D. Del.)
January 21, 2011 Hearing Transcript

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 10-14092(CSS)

- -x

In the Matter of:

TOWNSENDS, INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

January 21, 2011

1:09 PM

B E F O R E:

HON. CHRISTOPHER S. SONTCHI

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: DANA MOORE

collateral, the same million-eight will be available for the 503(b)(9) claimants, given their administrative priority status is protected by the Code.

Unless Your Honor has any questions of the committee position, that's why we have come to difficult conclusions, and it's been a lot of conversation by the committee including direct conversation between the committee members and the bankers, yesterday, with no professionals on the phone call to discuss these issues.

THE COURT: Okay.

MR. BUECHLER: Thank you.

THE COURT: Thank you, Mr. Buechler. Anybody else wish to be heard?

Let me see if I understand, Mr. Abbott. Under no scenario will the 503(b)(9) creditors be paid in full?

MR. ABBOTT: Your Honor, technically, it's possible; practically, impossible. The range of values, given the amount of debt, here, we just don't see a buyer clearing the secured debt.

THE COURT: But other administrative claims will be paid in full?

MR. ABBOTT: Post-petition administrative claims, we expect to be paid in full under this revised budget, Your Honor.

THE COURT: Well, we've got a problem. Not going to

run an administratively insolvent estate. There are benefits to the current administrative claims that are accruing. There are benefits to the unsecured creditors. But it can't be done on the back of the 503(b)(9) admin claims, which are admin claims. Congress has made that determination. So certainly I would have a problem running any case that was administratively insolvent. But one that is both administratively insolvent and prefers one set of administrative creditors over another is doubly troubling. So that's -- well, I'm not going to do it.

MR. ABBOTT: To clarify --

THE COURT: I'm not making -- I'm not making the -- this came up on Goody's, for example, Goody's I, and it turned out we were all wrong. But the point there was there had to be a set aside to pay these claims in the plan that the evidence indicated was a reasonable estimate that they would get paid. Turns out, it was wrong. But the point being, I'm not making anyone guarantors or insurers of the fact that the case is administratively solvent. But to go in with a path forward that indicates -- and I certainly appreciate your candor to the Court -- that a certain type of administrative expense claim won't get paid in full but yet others will, I just -- I can't run that kind of case.

MR. ABBOTT: I understand that, Your Honor. Could I ask the -- well, is it --

THE COURT: Need help? Go ahead.

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
DN: cn=Lisa Bar-Leib, o, ou, email=digital1@veritext.com, c=US
Date: 2011.02.22 15:56:20 -05'00'

_____

LISA BAR-LEIB (CET**D-486)

AAERT Certified Electronic Transcriber

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: February 22, 2011

Exhibit E

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
BIG LOTS, INC., *et al.*,	Case No. 24-11967 (JKS)
	(Jointly Administered)
Debtors.[1]	**Re: Docket No. ___**

ORDER ENFORCING THE FINAL DIP ORDER AND COMPELLING PAYMENT OF STUB RENT AND SECTION 503(b)(9) CLAIMS

Upon the motion (the "Motion")[2] of the Official Committee of Unsecured Creditors (the "Committee") of Big Lots, Inc. and its affiliated debtors and debtors in possession (collectively, the "Debtors") seeking entry of an order (this "Order"), pursuant to sections 105, 365, 503, and 1112(b) of the Bankruptcy Code, compelling the payment of Stub Rent and 503(b)(9) Claims or, in the alternative, converting these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, as set forth in the Motion; and the Court having jurisdiction to grant the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b) and the *Amended Standing Order of Reference* of the United States District Court for the District of Delaware, entered February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers, are as follows: Great Basin, LLC (6158); Big Lots, Inc. (9097); Big Lots Management, LLC (7948); Consolidated Property Holdings, LLC (0984); Broyhill LLC (7868); Big Lots Stores - PNS, LLC (5262); Big Lots Stores, LLC (6811); BLBO Tenant, LLC (0552); Big Lots Stores - CSR, LLC (6182); CSC Distribution LLC (8785); Closeout Distribution, LLC (0309); Durant DC, LLC (2033); AVDC, LLC (3400); GAFDC LLC (8673); PAFDC LLC (2377); WAFDC, LLC (6163); INFDC, LLC (2820); Big Lots eCommerce LLC (9612); and Big Lots F&S, LLC (3277). The address of the debtors' corporate headquarters is 4900 E. Dublin-Granville Road, Columbus, OH 43081.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion having been given and it appearing that no other or further notice need be given; and the Court having found the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that the relief is in the best interests of the Debtors' estates and their creditors; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is granted as set forth herein.

2. The Debtors are hereby immediately authorized to draw on the DIP ABL Facility and/or DIP Term Facility to fund remaining Stub Rent obligations and to pay outstanding 503(b)(9) Claims, to the extent necessary.

3. The Debtors are authorized and directed to pay outstanding Stub Rent and 503(b)(9) Claims within five (5) business days of entry of this Order (the "Default Date").

4. The Debtors are authorized and directed to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

5. The Court retains jurisdiction as to all matters relating to or arising from the implementation, enforcement, or interpretation of this Order.